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ASSISTANCE FOR CIVILIAN CASUALTIES OF WAR

HEARING

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON APPROPRIATIONS

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ASSISTANCE FOR CIVILIAN CASUALTIES OF WAR

WEDNESDAY, APRIL 1, 2009

U.S. SENATE,
SUBCOMMITTEE ON STATE, FOREIGN OPERATIONS,
AND RELATED PROGRAMS,
COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10:10 a.m., in room SD–138, Dirksen Senate Office Building, Hon. Patrick J. Leahy (chairman) presiding.

Present: Senators Leahy and Lautenberg.

OPENING STATEMENT OF SENATOR PATRICK J. LEAHY

Senator LEAHY. Good morning. I am glad to see everyone here.

It was 21 years ago when I visited a field hospital in the jungle bordering Nicaragua and Honduras. Some of you in this room have heard this story before. It was during the war between the Contras and the Sandinistas, and it was—as often happens in wars—the civilians who bore the brunt of the casualties.

There was a young boy there who the medics had basically adopted. He had no place to go. He had lost a leg from a landmine. He had a homemade wooden crutch. They had put some blankets over in a corner, and that is where he stayed. He had no way of working in fields or in the jungle to gather food, and he was just living there.

I know that I asked him questions about whether he thought the landmine was from Contras or from Sandinistas. He didn't know who they were. He didn't really even know that there was another country just a few miles from where he was. But he did know that his life was ruined because of that landmine.

Following that, I began the War Victims Fund, and it has been totally bipartisan because shortly after one of the times when the control of the Senate changed and Republicans were in the majority, and Senator Mitch McConnell became chairman of this subcommittee, he had it renamed the Patrick Leahy War Victims Fund.

I am proud to have my name on that, but I am more proud about what has been done with it. It responds to the fact that unlike a century ago, when armies fought armies, and civilian casualties were the exception, not the rule, today it is overwhelmingly civilians who suffer the casualties.

A U.S. Institute of Peace report said the number of civilians who have died in armed conflicts in the past couple of decades is enor-

mous. Nearly 200,000 civilians were killed in Bosnia. Between 500,000 and 1 million Rwandan civilians perished in the genocide. At least 200,000 people have died in Darfur.

Nearly 5 million in the Democratic Republic of the Congo (DRC). Put that in perspective. My State of Vermont has 660,000 people. The whole State. Five million have died in the DRC. Many thousands of Iraqi and Afghan civilians have died in recent years. These are just a few examples.

The Leahy War Victims Fund has supported programs to assist people who are severely disabled in armed conflicts around the world. I want to thank the United States Agency for International Development (USAID) and all the Leahy Fund partners of the past 20 years that have made it what it is and for what they have done to help.

Dirk Djikerman—how badly have I mispronounced your name?

Mr. DJIKERMAN. It works.

Senator LEAHY. Dirk is the Acting Assistant Administrator for Democracy, Conflict, and Humanitarian Assistance at the U.S. Agency for International Development and is going to talk about the work of the Leahy Fund and other USAID programs. He is eminently well qualified to do that, and I thank you for being here.

Following him will be Ca Va Tran, President of Vietnam Assistance for the Handicapped, who will testify about the work they have done that was supported by the Leahy Fund in Vietnam. He is accompanied by two beneficiaries of the program. Ca, I welcome you here. I would just say, personally, Ca is a man I have known for all these years, and I have watched his commitment to humanitarian efforts. I applaud you for it.

Since 9/11, the U.S. Government has established at least three other programs to assist civilian casualties of war complementary to the Leahy Fund. In 2002, after repeated bombing mistakes in Afghanistan resulted in civilian casualties, I included funding for USAID to establish a program to provide assistance to the victims.

This program, called the Afghan Civilian Assistance Program, helps families and communities that have suffered losses as a result of military operations. Erica Gaston, a fellow with the Campaign for Innocent Victims in Conflict, will testify about her report, "Losing the People," about civilian casualties and the Afghan Civilian Assistance Program.

When the United States invaded Iraq, we knew we would need a similar program there, especially as the civilian casualties began to add up and anger was felt toward the United States by the very people we were there to protect. A program was established and inspired by a young California woman who would rollerblade into my office to tell me and my staff why we needed this—Marla Ruzicka, who worked so hard in Baghdad to help focus the world's attention on the needs of innocent victims, until she was killed in a car bombing in 2005.

This program, also administered by USAID, has helped so many. In fact, it was officially named the Marla Ruzicka Iraqi War Victims Fund. And John Chromy, who is the Vice President of Cooperative Housing Foundation International, one of the Marla Fund partners, will describe their work.

Finally, there are programs in Afghanistan and Iraq funded by the Department of Defense to provide condolence cash payments to the families of civilians who have been killed or injured or whose property has been damaged or destroyed as a result of U.S. combat operations. And these payments are authorized by U.S. commanders in the field as an ad hoc response to the combat exemption in the Foreign Claims Act.

We invited the Pentagon to testify today so we could hear how their payments are complementary to and coordinated with the other programs I have mentioned. I am sorry they declined. I strongly support the payments they make. The increasing outcry over civilian casualties in Afghanistan illustrates that both the Afghan Civilian Assistance Program and condolence payments are critical to the success of our mission.

I wish the Department of Defense was here because we want to make sure that both the Department and USAID are working as well as they can to mitigate the anger and resentment caused by these mistakes.

I do appreciate that Jon Tracy, a former officer with the Army's Judge Advocate General Corps, is here to testify.

My good friend and one of the most valuable Members of the United States Senate, Frank Lautenberg of New Jersey, is here. I will yield to him.

Senator Lautenberg, you wanted to say something. Please go ahead, sir.

STATEMENT OF SENATOR FRANK R. LAUTENBERG

Senator LAUTENBERG. I did. And I thank you, Mr. Chairman, and there is no surprise at the fact that you have called this hearing to see what it is we are doing with innocent victims, civilian victims of war.

I left this committee in 2001. I thought I was going to do something else, but nothing pulled at my conscience more than the fact that I left the Senate, and the year 2001 we had the terrible calamity of 9/11. And I was so anxious to get back, and this is the first opportunity I have had as a returning member of this subcommittee, Mr. Chairman.

Senator LEAHY. And I am glad to have you back.

Senator LAUTENBERG. Well, for me, we are old friends. But also we say friends of long standing. We don't say "old" friends anymore.

But the fact that we work together on so many issues. And your continued commitment of concern for those who are innocent victims of war and terror is kind of a benchmark for all of us, your work against landmine proliferation and insisting that we do something about cleaning up those sites that we are aware of.

And so, it is a pleasure to be serving here with you, and I appreciate the opportunity to serve on this subcommittee so that we can have a more direct impact on our international funding priorities.

Now I am one of the few left here who served in World War II. I served in Europe during the war. And what happened to the civilian population was terrible. And when you look through a gun sight and you are not quite sure what the targets that you see are or when you are flying in an airplane. I wasn't in the Air Force.

I was in the Army, and it was then the Army-Air Force, by the way. But you see what happens in moments of war that leave such terrifying results.

And I commend those of you who are here representing the different organizations and speaking out. Don't ever be quiet because one thing we have seen, even though civilization continues to progress electronically, communication and so forth, the fact of the matter is so, unfortunately, do the numbers escalate for attacks on innocent people. You heard the chairman's statement.

When you recall what has happened in Darfur or the Congo, it is heartbreaking. And even though America, the United States directed the effort in Iraq, one cannot help be heartbroken when you see a child bending over a deceased parent or a sister or a brother. And those are things that we have to really fight against.

And Mr. Chairman, just a note. Today's news reported that within Iraq, we are seeing marauding groups join again in attacks on civilian populations. And so, we have got to do whatever we can to relieve the suffering that accompanies war. I believe that our country, America, has to be the leader, whether it is diplomatic, humanitarian, financial efforts to support our allies and but also—and I retract that.

To support this mission, this humane mission that we are discussing today. And we have got to work together to improve the lives of those who have been hurt and to see if we can help them resume a normal life. We want to work together to protect our national security, but we can never leave out the demonstration of our value for human life.

Mr. Chairman—I will not be able to stay with you, but I look forward to our doing things in this subcommittee that are often forgotten in the hustle and bustle of economic issues and other things. So, I am pleased to be a part of it.

And I thank you for including me in the hearing this morning.

Senator LEAHY. Thank you very much, and it is good to have you back.

Before you proceed, Mr. Djikerman, the subcommittee has received a statement from Senator Inouye, the chairman of the full committee, which will be placed in the record at this point.

[The statement follows:]

PREPARED STATEMENT OF SENATOR DANIEL K. INOUYE

Mr. Chairman, and Ranking Member Gregg, thank you for convening today's hearing on the United States' Assistance for Civilian Casualties of War.

As it has been stated many times before, "war is hell." This is especially true for the men, women, and children that are not in uniform, or have trained to enter combat zones. The high cost of the unintended consequences of war and permanent impact it has cannot be calculated. Our Nation cares deeply about the human impacts its actions have in the world. It is important to note that our military forces exercise the utmost caution when they enter the field of battle, and also provide care for those that may have been harmed. The actions our Department of State, U.S Agency for International Development, and Non-Governmental Organization partners provide the assistance required for those who may have been unintentionally hurt. Their tireless and boundless compassion helps us move forward in our struggles around the world.

I am pleased to learn about the experiences of our witnesses as they implement the assistance afforded by the Leahy War Victims Fund, and their evaluations of how we may improve delivery of assistance by the U.S. Agency of International Development. Thank you Mr. Chairman.

Senator LEAHY. Assistant Administrator Djikerman, please go ahead, sir.

STATEMENT OF DIRK DJIKERMAN, ACTING ASSISTANT ADMINISTRATOR FOR DEMOCRACY, CONFLICT, AND HUMANITARIAN ASSISTANCE, U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

Mr. DJIKERMAN. Thank you, Mr. Chairman. And thank you, Senator.

On behalf of the Agency for International Development, I appreciate the opportunity to testify before the subcommittee. It has been, as you mentioned, 20 years since the creation of the Leahy War Victims Fund, and we do have an important story to tell.

INTRODUCTION

War and civil strife threaten the stability and the prosperity of nations, and the death and destruction of the civilian populations has often meant many families have lost their breadwinner. And many men, women, and children have faced physical injuries that have changed how they live and provide for themselves and their families.

Through congressional vision and leadership, such as shown by this subcommittee and yourself, Mr. Chairman, USAID is demonstrating a strong commitment to civilian victims of war.

The Leahy War Victims Fund, the Marla Fund for Iraqi War Victims, and the Afghanistan Civilian Assistance Program, also referred to as ACAP, are specific USAID programs that are working to mitigate the short- and long-term impact of conflict on civilians.

While these programs provide direct services to those most vulnerable to war and the accidents resulting there from, these programs also focus on the capacity of local governments and nongovernmental organizations (NGOs), local NGOs in particular, to strengthen their capacity to deliver needed services and to get to a point where they become self-sustainable.

Through these programs, USAID has also worked with our partners to strengthen local laws, advocate for equality, create jobs and economic opportunities, and improve the quality and sustainability of the rehabilitation efforts.

Our partners report that more than one-quarter of 1 million civilian men, women, and children have received direct services over the past two decades. Millions of citizens also now have access to healthcare, rehabilitation services, and education through rebuilt schools, hospitals, and renovated orthopedic clinics.

These three programs are complemented by four other USAID activities or initiatives targeting the especially vulnerable populations. We have the Displaced Children and Orphans Fund, the Victims of Torture Fund, and two other funds, which address the concerns of people with disabilities and those who require the use of a wheelchair.

For today's hearing, I will focus my remarks on the work of the Leahy War Victims Fund, the Marla Fund, and ACAP.

LEAHY WAR VICTIMS FUND

Since its creation in 1989, the Leahy War Victims Fund has been the foundation of USAID efforts to respond to the needs of civilian

victims. So far, $165 million has been invested, and more than one-quarter of 1 million civilians have received direct assistance in over 30 different countries.

This fund, which is at $12 million in fiscal year 2008, provides assistance to people living with disabilities, particularly those who have sustained mobility-related injuries from unexploded ordnance, anti-personnel landmines, and other causes of disability, including polio and other preventable diseases that might result from interrupted national immunization campaigns in countries in conflict.

For the first decade, these programs were seen as a one-time humanitarian response to the physical needs of those civilian populations. The fund has, over the years, strategically expanded its scope to include work with partners to design and implement a wider range of development programs and to establish the foundations for sustainable services.

We, at USAID, contribute to the design and the enforcement of technical standards with other partners, like the World Health Organization (WHO), to ensure the competency of practitioners in the countries who provide the care. These programs ensure that the treatment and the equipment used are as appropriate as possible and effective, increasing the mobility of the populations that are suffering from the disabilities.

LEAHY FUND EXAMPLES

The Leahy Fund has had a lot of significant examples over the past 20 years, but I would like to share three specific ones. In sub-Saharan Africa today, using Leahy war victims funding, the International Committee of the Red Cross (ICRC) funds 28 small-scale rehabilitation workshops. Most of these workshops are in remote locations, operated by one or two people. At this point in 2008, these workshops have provided over 10,000 orthopedic devices to people in need.

Another example is the work being done with the International Society for Prosthetics and Orthotics. This has led to the design and the establishment of procedures for accrediting prosthetic and orthotic schools in the developing world. To date, we have been able to accredit schools in Cambodia, El Salvador, Pakistan, Sri Lanka, Tanzania, Togo, and Vietnam, and new programs are working toward accreditation in Colombia, Jordan, and Morocco.

And the last example I would like to highlight is an important one that shows about the broader impact of these programs. In 1989, prior to the development of a formal relationship between the United States and Vietnam, the Patrick Leahy Fund enabled the United States to start a relationship with the Vietnamese that helped eventually lead to a normalization of relations.

MARLA FUND

When we go fast forward a little bit, looking at some of the lessons learned there, USAID is now also supporting the program, as you mentioned, the Marla Fund in Iraq. The program was established in 2003 and later renamed, I believe, in 2005. And through that program, we have assisted both families and communities affected by coalition military operations.

To date, USAID has received approximately $40 million for the program, and a recent USAID audit report notes that between 2003 and 2008, more than 350,000 Iraqis have benefited directly from this program. And the audit report notes that an additional 1.5 million have benefited indirectly from the 630 completed projects.

And I think many of our partners here today can talk in a lot more detail about that.

Direct medical help is also provided to individuals. Hospitals and health clinics have been rebuilt, and supplies have been provided. We have also provided assistance to help war victims establish businesses, so they can support themselves and their families.

One project that I would like to note is a bakery in Salah ad Din. Establishing that bakery has been a joint effort between 30 families, each of which has lost at least one member either injured or killed during the war. With USAID assistance, a sound business plan was developed, and now the bakery is up and running, and it is providing the primary income for those 30 families, plus the people that they employ.

AFGHANISTAN CIVILIAN ASSISTANCE PROGRAM

When we look at Afghanistan, there, too, we have begun to adopt something similar to the program that we have in Iraq, and we call that the ACAP program, or the Afghan Civilian Assistance Program. In 2008, we have $9 million budgeted for it, and in 2010—well, we will be talking about that a little bit later, I guess.

This is not, however, a compensation program, nor is it a condolence payments program. It is providing medical assistance for people who have been injured, civilians. It also provides infrastructure for schools and clinics and administration offices that have to be rebuilt.

If a family loses a breadwinner, ACAP can provide vocational or business training to the surviving family members. If the family source of income was lost due to the loss of livestock or a fruit orchard, we can help rebuild or replace that.

ACAP is also flexible enough to provide educational assistance to ensure that children who have lost one or both parents can continue to go to school. To date, the program has benefited over 5,000 people. And in 2009, ACAP is estimated to reach 26,000 beneficiaries directly.

CONCLUSION

Much has been said about what we can achieve with these initiatives for civilians in conflict, and they are an important part of how we contribute to the stabilization efforts in these countries like Afghanistan and Iraq. They help open doors in places like Vietnam. They build goodwill, and they strengthen our country's relationship now and into the future.

When people are at their most vulnerable, they often need the most basic assistance, and these programs help. They have had an immediate impact, and we have worked to make it a more sustainable impact. They reflect partnerships, and they also reflect the American values that we hold dear.

I understand a USAID partner, the World Rehabilitation Fund, has provided the subcommittee with a short video that describes their project in Lebanon. We have been working with them since 2000 in an effort to create an agricultural cooperative. And this cooperative is, again, well on its way to financial stability.

In 2008, 77 percent of the cooperative's 200-plus family members were making a profit, and this, again, is the primary source of income for these people.

With ongoing support and your strong congressional leadership, Mr. Chairman, USAID will continue to provide these critical services and increase opportunities for civilian victims of conflict throughout the world.

Thank you very much and look forward to your questions.

[The statement follows:]

PREPARED STATEMENT OF DIRK DIJKERMAN

Mr. Chairman and Members of the Committee, I appreciate the opportunity to testify before this Committee concerning assistance for civilian victims of war by the U.S. Agency for International Development. Twenty years after the creation of the Patrick Leahy War Victims Fund, we have an important story to tell of changed lives, hopeful livelihoods, and respect for the dignity of women and men who have endured severe physical and emotional trauma.

War and civil strife continue to cause death and destruction around the world. The consequences for civilians are devastating: families lose their breadwinner, and men, women, and children suffer physical injuries that dramatically changed their assumptions about how they will live and provide for themselves and their families. The statistics are alarming:

—In many of the world's conflict zones, 10 or more people succumb to war-exacerbated disease and malnutrition for every combat death.

—In times of war, entire populations may flee their homes and communities. If they find shelter, it is often in the form of refugee or internally displaced persons camps where access to basic health and education is limited or non-existent.

—The World Health Organization conservatively estimates that 10 percent of a population has some sort of disability. In conflict-affected countries, that number may be closer to 25 percent.

One direct consequence of war and conflict is the destruction of clinics and hospitals, schools, farm land, bridges, roads, and other critical infrastructure. With these losses, immunization campaigns are often interrupted, malnutrition and disease exacerbated, and further death and injuries result. A recent United Nations Assistance Mission in Afghanistan report notes, "In addition to fatalities as a direct result of armed hostilities, civilians have suffered from loss of livelihood, displacement, destruction of property, as well as disruption of access to education, healthcare and other essential services."

The toll of armed conflict, it is clear, continues to rise long after direct combatant casualties are tallied.

Through congressional vision and leadership, such as that shown by this committee, the U.S. Government continues to demonstrate a strong commitment to vulnerable populations, including civilian victims of war. USAID's social services and assistance programs, along with the Department of State's humanitarian assistance and mine clearance activities, play an important role in reducing vulnerability and offer targeted help to meet basic needs, reduce vulnerability, and increase self-reliance. I will focus my remarks today on USAID's programs.

The Patrick Leahy War Victims Fund, the Marla Ruzicka Iraqi War Victims Fund, and the Afghan Civilian Assistance Program are specific USAID programs working to mitigate the short- and long-term impact that conflict has on civilian victims. While the programs provide direct services to those most in need, the capacity of local governmental and nongovernmental service providers are strengthened to address the most critical needs and build capacity to provide continuing services.

Through these programs, USAID works on the ground, providing direct services to those left most vulnerable by war. In addition to critical rehabilitation care, the programs provide support to increase economic opportunities. They design and change the policies relating to people with disabilities. They improve the quality of care and life for civilian victims of war. Through these programs, our partner orga-

nizations report that more than a quarter of a million civilian men, women, and children have received direct services. We can easily count the number of civilians receiving orthopedic devices, the number of individuals now employed, and the number of houses constructed. However, incalculable are the impacts these programs have had on rebuilding a sense of community and hope for the future. Millions of civilians now have access to health care, rehabilitation services, and education through program activities that have rebuilt hospitals, renovated orthopedic clinics, and reestablished schools.

These targeted funds have given USAID the resources to work closely with nongovernmental organizations (NGOs) and governments to strengthen laws, advocate for equal opportunities for persons with disabilities, provide jobs, and improve the quality and sustainability of rehabilitation efforts. With continued congressional support we look forward to continuing this work.

These two programs are complemented by four other USAID initiatives targeting especially vulnerable populations: the Displaced Children and Orphans Fund, the Victims of Torture Fund and two funds that address the needs of people with disabilities and those who require the use of a wheelchair.

I would welcome the opportunity to brief the committee on the work USAID is doing under all of our special initiatives. For today's hearing, however, I will focus my remarks on the Patrick Leahy War Victims Fund, the Marla Ruzicka Iraqi War Victims Fund, and the Afghan Civilian Assistance Program.

War Victims Fund

Since its creation in 1989, the Patrick Leahy War Victims Fund has been the foundation of USAID's efforts to respond to the needs of civilian victims of conflict in war-affected developing countries. Since its inception, just over $165 million have been invested and over a quarter of a million civilians have received direct assistance in over 30 war-affected countries. This fund, at $12 million in fiscal year 2008, provides a dedicated source of financial and technical assistance for people living with disabilities, particularly those who have sustained mobility-related injuries from unexploded ordnance, antipersonnel landmines, and other direct and indirect causes of disability—including polio and other preventable diseases that might result from interrupted immunization campaigns.

Initially, these programs were seen as one-time humanitarian responses to the overwhelming physical needs of civilian populations injured collaterally during or after conflicts. However, amputation and polio are lifelong conditions. Even the best prostheses need to be repaired frequently and replaced every few years. Children require two or more devices each year as they continue to grow and mature.

As we respond most appropriately to the needs of civilian populations, over time the fund has expanded its scope more strategically. Programs that deliver immediate care to those in need continue. We also work with partners to design and implement a range of development programs that not only accommodate the changing needs of the populations they serve, but establish the foundations in developing countries for sustainable services. We contribute to the design and enforcement of international standards to ensure that practitioners who provide care to survivors are competent. The programs ensure that the treatment and equipment used are appropriate and effective in increasing the mobility of people with disabilities who live in developing countries. Basing our work on international standards allows us to measure the quality and effectiveness of health care services being provided.

The Fund's work with the International Society for Prosthetics and Orthotics (ISPO) has led to the design and establishment of processes for accrediting schools in the developing world. The Fund's work with ISPO has led to the accreditation of schools in Cambodia, El Salvador, Pakistan, Sri Lanka, Tanzania, Togo, and Vietnam. Additional programs will soon be endorsed by ISPO in Colombia, Jordan, and Morocco.

Individuals studying at these institutions receive a Bachelor of Sciences degree or equivalent in prosthetics and orthotics. Each year approximately 70 people enroll in 3 to 4-year professional programs. As a result of direct support from USAID, 228 students from more than forty countries have or are in the process of receiving standardized training as rehabilitation professionals. Once trained, these specialists work in their home countries, increasing the local human resources capacity for service provision. This work is genuine capacity building that has a lasting impact on this and the next generation of practitioners.

Since 1995, the program has supported efforts to examine leading-edge technology and enable the use of sound, state-of-the-art practices in war-affected regions. Mobility-enhancing interventions are only as good as the equipment, fittings, and technology behind them. Hot climates, extended use, and scant access to maintenance can be especially damaging to prosthetic feet and knees.

Over the last 20 years, the fund has worked with partner organizations to test designs and production methods for prosthetic components that enhance their quality and durability.

Initially, the fund emphasized local production and assembly of prosthetic devices. The global economy has forced us and our partners to adapt our approach. Now, the fund supports the purchase of prosthetics and orthotics from countries, including the United States, that are the leading producers in the field. In this way, the program can better ensure that in-country workshops use sound components and that people in developing countries received high-quality, affordable prosthetic and orthotic devices.

At the same time, the fund continues to support and expand the capacity of local organizations and personnel to provide services and care for people with disabilities. Traditionally, international donors have invested largely in regional workshops and clinics. While these have the potential to serve many people, and handle complex cases, it has been difficult for ministries of health to commit to their long-term support. For this reason, we have begun to emphasize smaller-scale, targeted support to local and community-based organizations that provide services to survivors and people with disabilities.

In Africa, through the International Committee of the Red Cross (ICRC), USAID provides support to more than twenty-eight small-scale rehabilitation workshops. In most instances, these workshops are staffed by one to two people and are located in rural, often inaccessible, places. After training in both rehabilitation as well as workshop management, the ICRC provides these workshops with durable materials and mentoring on a rotating basis. This approach has increased access to rehabilitation services to those clients who often cannot make the journey to a provincial town center. Each year, these projects provide orthopedic devices and services to more than 10,000 people.

The provision of prosthetics/orthotics and equipment remains an important humanitarian goal of the Patrick Leahy War Victims Fund. Truly meaningful and sustainable intervention though requires a holistic approach that takes into consideration individual, family, and community context. With this in mind, the program has broadened its approach to increasing mobility and quality of life among victims of conflict. Among the innovative initiatives has been the support for social inclusion, employable skills, and the ability to advocate on their own behalf for effective legal protections against discrimination.

Full access to services and facilities and full community inclusion for people with disabilities are fundamental guiding principles of the Fund's programming. Programs support barrier-free accessibility to schools, work, and recreation, as well as opportunities for political engagement. Other components foster community awareness of the need for inclusion, recognizing the inherent challenges, and the capacity of people with disabilities to reintegrate.

Ensuring that people with disabilities are self-sufficient is a key goal of the Patrick Leahy War Victims Fund. The ability to generate an income and provide for oneself and one's family is an important component. Since 2000, we have supported the World Rehabilitation Fund's efforts to create a cooperative in Lebanon through which local villagers market and sell products such as poultry, eggs, dried herbs, and beeswax while learning critical life skills. The cooperative is well on its way to financial sustainability through its creative marketing and product lines, including the first Lebanese free-range chicken eggs. In 2008, 77 percent of its over 200 members were making a profit. For a majority of the members, their World Rehabilitation Fund-supported enterprises represent their family's major source of income.

Around the globe, people with disabilities often face segregation in the workplace. A Fund-supported initiative in Sri Lanka worked with employers to encourage them to hire people with disabilities into mainstream positions. Part of this work involved transforming traditional job fairs by dedicating additional days to which reasonable accommodations measures could be made for people with disabilities. In one case, 48 of 100 people with disabilities who attended these job fair days were offered positions immediately, and 33 more received second interviews.

Meaningful social and political integration is realized when people with disabilities have legal protections and the ability to advocate on their own behalf. USAID's 1997 disability policy advances a clear vision and framework for all of our efforts in the area of disability-related issues. This is reinforced through two policy directives and program funding to advance inclusive development practices.

USAID is the leading international agency engaged in disability policy work in Vietnam. Among the many accolades, two national laws have been achieved regarding disabilities and the establishment of building design codes and construction standards to ensure access for people with disabilities. Primarily through our part-

nership with Vietnam Assistance for the Handicapped, a "Blue Ribbon" employment council has been established, and we have worked with the Ministry of Home Affairs to establish a law allowing for the establishment of local NGOs. Notably the first organizations registered as local associations, a stepping-stone to becoming a legal NGO, have been disabled person's organizations.

Where possible, we promote partnership with governments, especially ministries of health. Because many countries emerging from post-conflict situations have tenuous governmental structures, we work primarily through well-respected and experienced NGOs such as World Rehabilitation Fund, Handicap International, the ICRC, ISPO, and Vietnam Assistance for the Handicapped.

These organizations, and others, have worked with USAID to provide more than 175,000 artificial limbs and orthoses, to create or support 201 workshops, and to train more than 1,500 people to provide appropriate rehabilitation services to those in need. Coupled with support provided for related interventions such as surgeries, fostering of economic self-sufficiency and social inclusion, the fund has provided support for services to over one-quarter of a million people in more than thirty war-torn countries.

The impact of these programs is measured not only in terms of beneficiaries serviced, but also, and more importantly, in terms of the human and institutional resources that are developed and able to continue without external support.

Marla Ruzicka Iraqi War Victims Fund

In addition to the provision of immediate on-the-ground care to victims, today I want to emphasize that our programming is designed to help establish sustainable rehabilitation services that can become core components of the larger healthcare systems of developing countries.

USAID also supports programs that address the needs of war victims in countries where war is a recent occurrence. Through a program established by Congress in 2003 through the initiative of Senator Patrick J. Leahy to help Iraqi civilians injured in the conflict, and renamed the Marla Ruzicka Iraqi War Victims Fund in 2005, we have been given the mandate to assist Iraqi civilians, families, communities, and organizations that have been directly affected by coalition military operations. This Fund was named in remembrance of Marla Ruzicka, a passionate humanitarian who worked on behalf of civilian victims of war in Iraq. On the day in 2005 when she was tragically killed, Ruzicka had been visiting Iraqi families who had lost relatives to violence.

The Marla Fund is implemented through four nongovernmental agencies that cover different regions of the country. It is separate from a Pentagon-run program that provides compensation for deaths, injuries, or property damage as a result of activities by coalition forces. The U.S. military plays no direct role in the Marla Fund.

To date, USAID has received approximately $40 million in appropriations for assisting Iraqi war victims, of which $15 million have been obligated under the Marla Fund since September 2006. A recent USAID audit report notes that since 2003, more than 350,000 Iraqis have directly benefited from the program, an additional 1.5 million have benefited indirectly from the more than 630 completed projects. The Marla Fund has supported more than 1,700 individual and community projects.

Direct medical help is provided to individuals. Hospitals and health clinics have been rebuilt and supplies provided. Damaged property and municipal structures have been repaired. War victims have received assistance to establish businesses so they can support themselves and their families.

Injured civilians, many of them amputees who require prosthetics, have secured medical care and rehabilitative services. One such case involved a young Iraqi girl who lost part of her right hand and suffered facial disfigurement as a result of conflict violence. The Marla Fund was used to pay for her travel to the United States for reconstructive surgery not available in Iraq.

In one Baghdad community where the local health clinic was destroyed by violence, the Marla Fund rebuilt the health clinic and restocked it with much-needed medical supplies. Now that the local health clinic is again operational, community residents no longer have to travel long distances for their regular healthcare needs.

One of the Marla Fund's successful income-generating projects is the opening of a bakery in Salah ad Din governorate. The establishment of that bakery has been the joint effort of thirty families, each having a family member injured or killed in the war. After developing a sound business plan, the families worked with a USAID implementing partner to submit a viable funding application. Today, the bakery thrives, boosting the incomes of these families and generating employment opportunities to others in the community.

We have assisted widows and families of war victims. One example is the story of Fadheela Ali Mohammed whose husband was accidentally shot and killed while driving pilgrims across the border from Iran to Iraq. Widowed Fadheela had three children and an ailing mother for which to care, but she did not have proper employment or housing.

In an effort to help Fadheela and her family recover from their loss and avoid poverty, monies from the Marla Fund helped build a new house. The security of having reliable housing allowed Fadheela to gain confidence and focus her attention on starting her own business. She turned a portion of her new house into a successful shop that sells household goods.

Like the Patrick Leahy War Victims Fund, the Marla Fund is successfully reaching some of the most vulnerable people who are civilian victims of war and conflict.

The Afghan Civilian Assistance Program (ACAP)—The Leahy Initiative

USAID also provides assistance to civilian victims of war in Afghanistan. Much like the Marla Ruzicka Iraqi War Victims Fund, the Afghan Civilian Assistance Program (ACAP) provides direct assistance to those who have suffered losses as a direct or indirect result of military operations in Afghanistan.

In 2003, at the urging of Senator Patrick J. Leahy, USAID's Afghanistan Transition Initiative was established to build or repair shelters, roads, and bridges. The implementing organization, International Organization for Migration (IOM), worked primarily in Afghanistan's southeastern region, a region that saw extensive military operations against insurgents and the Taliban beginning in 2001. That first initiative ended in 2005. Subsequently, USAID developed the ACAP.

Since 2007, USAID has obligated $18.5M into ACAP. To date, the program has reached nearly 5,000 beneficiaries. In 2009, ACAP estimates that it will reach an additional 26,000 beneficiaries that have already been identified for assistance.

Through ACAP, USAID assists families or communities that suffer losses from specific military incidents. Civilian victims are assisted when they sustain injuries or lose family members. ACAP is not a compensation program, does not provide handouts of cash, nor is it intended to be used for condolence payments. Rather, ACAP provides assistance to those most in need through sustainable assistance packages, which IOM adjusts, to the specific needs of the beneficiaries.

ACAP provides timely medical assistance for injured civilians—working in-country or through an international referral system. ACAP programs work to aid entire communities by assisting local hospitals improve their responses in treating injuries. Communities receive assistance to rebuild vital infrastructure and municipal buildings, such as schools, clinics, and administration offices, which provide essential services for the entire community.

If a family loses its primary income provider, ACAP may assist surviving family members by providing vocational or business training; replacing of the family's source of income, such as its herd of livestock or it fruit orchard; or assisting in establishing a new small business. ACAP is flexible enough to provide this type of assistance, to fund the repair of a damaged home, or to ensure that children are able to continue their education when one or both parents are lost.

Through IOM, USAID works on international, national, and provincial levels, coordinating its operations with other U.S. Government agencies, NATO Forces, the Afghan Independent Human Rights Commission, the Government of Afghanistan, and the United Nations Assistance Mission in Afghanistan. ACAP programs have a no-blame nature; there is no focus on why or how the military forces have been involved in specific incidents. What the program does focus on is identifying the best ways to assist members of the Afghani population who have suffered often devastating losses as a result of war and providing them with tools to rebuild their lives.

The Way Forward

Foreign assistance can play a crucial role in building a more safe and secure world, with representative governments that foster economic growth and allow families to provide for their own needs as well as ensure transparent and accountable good governance. This is in the best interests of the United States.

Despite our best efforts to foster these ideas, some countries remain mired in war or have recently emerged from conflict. When people are at their most vulnerable, they are often in need of the most basic assistance. This is what the Patrick Leahy War Victims Fund, the Marla Ruzicka Iraqi War Victims Fund, and the Afghan Civilian Assistance Program were designed to do. They have an immediate impact as well as a sustainable development objective.

Much has been achieved under these initiatives for civilian victims of conflict: Over one-quarter of a million people have received direct assistance; hundreds of

hospitals, schools, and rehabilitation centers have been either built or supported; and thousands of national staff have been trained. The programs contribute to stabilization efforts in countries in the midst of conflict, like Afghanistan and Iraq, and they help open doors in countries like Vietnam. The programs provide direct assistance to some of the most vulnerable populations in the world. They build good will and strengthen our country's alliances now and for the future.

In Iraq, USAID is looking at ways to increase support to vulnerable civilian populations such as war widows. The State Department and USAID are analyzing their efforts in an effort to enhance support to war widows beyond what is already provided by the Marla Fund. Additionally, USAID will work to ensure that the needs of these vulnerable populations are addressed by the Government of Iraq as the Government of Iraq develops their Social Safety Net through the Ministry of Labor and Social Affairs in the near future and as newly elected Provincial Councils are formed. USAID will continue to build the capacity of the Government of Iraq do this through on-going programs such as our Local Government Project and National Capacity Development Project also known as Tatweer ("Development").

In addition to providing essential rehabilitation services to amputees and other people with disabilities, the Patrick Leahy War Victims Fund will continue to support the development of more durable and appropriate prosthetic, orthotic, and wheelchair technologies. It will strengthen host-country capabilities through the development of stronger laws and policies, and train vital technical staff. The Fund will continue to provide support for the strengthening of small-scale rehabilitation and advocacy efforts on behalf of people with disabilities.

Once an amputee has been fit with a quality limb or surgery has been performed, civilian victims often lack the skills necessary to return to meaningful employment. To that end, the Fund will put more technical and financial emphasis on providing increased economic opportunities. This may include job skill training, strengthening vocational rehabilitation efforts, further development of public-private sector partnerships, and employment mentoring.

With continued strong congressional leadership and support, USAID will continue providing critical services and increasing opportunities for civilian victims of conflict throughout the world so that they may return to meaningful employment and active participation in their communities.

Senator LEAHY. Thank you.

One of the reasons I wanted to have this hearing was to highlight the great work you and your colleagues do. I thank you for that.

It is interesting, when you talk about the issue of foreign aid, especially at a time like this when our own country's economy is in dire straits, it is so easy to demagogue and say we should not send anything to help others overseas.

I think what you and your colleagues do is demonstrate that there is a moral aspect to this. We are the wealthiest Nation on Earth, even with the economic problems today. To not respond, I think, goes to our conscience and our moral standing in the world. It goes beyond politics or economics.

When I go visit some of these sites I am often accompanied by my wife who has been a surgical nurse. It shows you how people with disabilities regain their mobility and their dignity.

I had the opportunity to visit the program in Lebanon that you described. I recognized a couple of the faces in the video. To give people an opportunity to earn income by raising bees and selling the honey. It seems like such a small thing, but it is a major thing to that family. When you think about Lebanon, there are so many people who are in need of jobs who have not been injured, who are not disabled. And this is a country with ethnic, religious and political violence.

I drove by a spot, I remember it very well. A couple of days after I left, a minister of the government was driving by exactly the

same spot when the road erupted, blew him up and the bodyguards with him. The explosion killed him and them.

You seem to be working in an area where you have everything against you, and yet I saw firsthand it could be successful. Do you want to tell us a little bit about that?

Mr. DJIKERMAN. Sure. Well, one of the things that really works is that the team of people at USAID who have been working on this issue have been working on this for 10 to 15 plus years, and they have developed good outreach not only with other international organizations, but with the partner network.

And probably one of the most key ingredients that we rely on and we try to build on is the, if you will, the motivation, the charisma, the energy brought by partners to do the activities on the ground. I think you all know, Mr. Chairman, that USAID works through partners in most places in the world. And we have been able to find very good partners to go into these very difficult places to start these activities.

And I think it is also fair to say in these conditions they have been above average in terms of their motivation, their ability to attract very good local staff, and to build partnerships with governments. Some governments have been more responsive than others, but they, nevertheless, have been building partnerships with governments.

And that type of work is leading not only to the initial benefits of getting services delivered, prosthetics, orthotics, but also getting to the longer term goal of creating institutions that are becoming increasingly self-sustainable. So a lot of it goes to our partners.

Senator LEAHY. I think of Dr. Nadim Karam. I met him, and I assume that this is what you mean by the type of partner. He is a remarkable person, for his vision and his commitment. And of course, Ca Va Tran, who we are going to hear from next.

It should be obvious, but tell me how, if you assist civilian casualties of war, that fits into international development?

Mr. DJIKERMAN. Well, basically, if we look at what USAID tries to do, it tries to help people help themselves, and not only the people themselves but also their governments. We work on the aspects that are necessary to make it all work, which means that it includes focusing on the regulatory environments and so forth. So, in that sense, it fits right in with what USAID is trying to do in terms of helping people in need.

USAID is also a representation of what the United States is and does in the world. We have, as you mentioned earlier, if you will, a moral responsibility. But it is also American values that we are trying to project, that we do care about the disadvantaged and disabled, particularly, those who have been affected by war. So, in that sense, it also fits in closely with our mandate.

Senator LEAHY. You look at some of the speeches of Secretary of Defense Gates. He has talked about how civilian casualties have been a major obstacle, for example, in winning the support of the Afghan people. We saw the same thing in Iraq.

We spend, I think, $10 million a year on the Afghan Civilian Assistance Program, $5 million on the Marla Fund, and that is only because Congress has put the money in. Should we be increasing

those amounts? Does USAID have any plan to increase funding for these programs?

Mr. DJIKERMAN. Well, there are a couple of angles to this. In addition to what we are doing with the Marla Fund and in Iraq, for example, is that we have been supporting and putting money into the community action program, which is built on and tries to take some of the lessons learned from the Marla Fund and the Patrick Leahy War Victims Fund to try to extend benefits and assistance to those other civilians affected by the war.

So there in Iraq, to date, we have put in an additional $500 million since 2003, which I would like to believe, and I do believe, builds on some of the earlier work that we have done.

Similarly, in Afghanistan, there are plans underway to put about $40 million into a fund that is going to be expanding assistance to those affected by the war as collateral problems.

Senator LEAHY. We talk about where the War Victims Fund has been used, and I think of Vietnam and President George H.W. Bush, the first President Bush, who was looking for a way to build confidence with Vietnam. Vietnam had helped General Jack Vessey on the POW–MIA issue. We were trying to find some way to reciprocate.

Bobby Muller of the Vietnam Veterans of America Foundation, and Ca Va Tran and others said here is a way we could do it, by using the War Victims Fund, train them to make wheelchairs and prosthetics, and do things that would be helpful. I recall talking at different times with then-President Bush and Secretary Baker and others and their enthusiasm in trying that.

I also remember when I visited Vietnam. I was there with John Glenn, Tom Daschle, and a couple of others. It was a very hot day. It was outside of Saigon. The speeches were in Vietnamese, but explaining periodically that I am the guy who started the War Victims Fund. Everybody would kind of point to me.

One man sitting there in a starched shirt, no legs, just stared at me. He had been crawling for years, using his legs. He was going to get his first wheelchair made there. I remember it very well. So, this went on and people kept pointing at me, and this man just kept, I thought, glaring at me.

I thought he must not be happy with me being here, an American and so on. They suggested I pick him up and carry him over and put him in the chair—he was a little bit of a person with no legs. I did. When I went to go, he grabbed my shirt, pulled me down and kissed me. It was a very moving thing.

I remember John Glenn, who is not an emotional person, with tears coming down his face, watching that. We were providing the assistance because of the help of people, some in this room, who made it possible to do that.

If you or I lost a leg, for whatever reason, we would go on. We would get a prosthesis. The doctor would fix us up. He or she might say this is what your insurance will pay for, but for another $500 or $1,000, you could have this much better one. We would pull out our checkbook, and we would do it.

We are talking about countries where $1,000 is an almost inconceivable amount of money, and I know we are trying to build them in the countries, which I believe strongly in. It creates jobs. What

are we doing in improving the quality of artificial limbs and wheelchairs in those countries?

Mr. DJIKERMAN. One of the investments we have been making with partners and other international organizations is to pull people together and evaluate some of the best practices. And here is just an example of a document that we pulled together with the World Health Organization to start pulling together this technology and best practices and then disseminating it out.

I believe there was a big conference about 1½ years ago in India, where there was a lot of evaluations of different types of wheelchair models and approaches to try to figure out what works well in different circumstances. And I guess, if I look at my own experience when I first went to Cambodia to look at some of these centers, as well as in Sri Lanka, the technology back then was more very reliant on local materials, for example, to bang out a tin leg or something like that, that would take maybe one person 1 day to do it.

Where we are today is using plastics and other materials that can be gathered locally to produce about six or seven, or four or five, depending on the environment and the technology.

So I do believe our ability as an international organization to help bring people together, help bring together best practices, and then help bring it to the countries with our partners to see if it is appropriate for their environment. I think it is working. I do feel that the limbs that I have seen in my career are lighter, and I also do feel that we are getting more sophisticated.

When I look at the early projects I used to visit, they were very much focused on orthotics and prosthetics. After my serving in Rwanda, up until the genocide, my sensitivity to the psychological impact of these types of events became much more acute. And so, we have been trying to do more services in those areas as well.

Senator LEAHY. Lloyd Feinberg has worked very hard on this for years, and I enjoy talking with him. He keeps talking about the improvements, and it has been an evolutionary thing, which is good. Because when I first created the program, I basically turned it over to you and said, "Here, make it work. And come back and tell me what is working. Tell me what is not working. We will help you and go forward."

Too many programs, as you know, are written in stone and nothing changes. And yet circumstances change over time. Rwanda is an example of that.

I should mention Lloyd is not here because he is on his second bike trip across the country. One 3,000 mile bike trip wasn't enough, I guess. I admire his abilities, and he goes all over the world to make this work.

I like very much what you said about working with the partners in these areas to use what makes sense there. I am thinking of sustainability. We are not going to stay in countries forever. How is Cambodia or Sierra Leone or Lebanon, Afghanistan—how do they eventually take over and do this themselves?

Because, unfortunately, we still haven't developed a technique to remove all the landmines and make people whole. Do we work with the goal that someday we are going to leave, and they are going to have to continue this themselves?

Mr. DJIKERMAN. Yes. That is the goal that we are working toward and should strive to work toward.

One of the key ingredients that we are seeing from our lessons learned so far, if you will, is that the pace that we can make progress toward sustainability or sustainability in the sense of it being financed within the country itself is the role and participation of the government.

You have mentioned some of the work in Vietnam. The Vietnam Government has been very supportive, and we have made much more progress there as compared to some other countries. But one of the key ingredients is the extent to which we are able to work with and help other people there, particularly in the government, appreciate that this type of thing has to be done.

I would like to highlight in Iraq, where the government is beginning to focus on the concept of social safety nets, we are trying to integrate into their program the lessons learned from our approaches on dealing with people with disabilities and other victims of war, as well as other vulnerable people. So that their programs that they can and should be able to fund in the future will be encompassing enough to include all those that need to be included.

But the key ingredient on sustainability is the government itself.

Senator LEAHY. Well, thank you. Because as long as I am here in the Senate, I am not only going to remember that little boy in the field hospital in the jungle of Honduras, but I am also going to remember all of the other places I have visited around the world in Africa and Asia and elsewhere, where you have worked and where we have victims that suffer in a way I would hope that my children or my grandchildren never have to suffer.

I think it is important that we continue to work with them, and I will continue to give the support. But what I need from you, and I make this as an open offer to you and to Lloyd, if there is support you are not getting—financially or anything else—from Congress, tell me. And I will work to get it.

So I thank you very much for being here.

We are going to take a 2-minute break while we set up for the next witnesses.

Mr. DJIKERMAN. Thank you very much, Mr. Chairman.

Senator LEAHY. Our next panel will have Ca Va Tran, President of Vietnam Assistance for the Handicapped (VNAH); John Chromy, who is Vice President, External Relations, Cooperative Housing Foundation International; Erica Gaston, Afghanistan Fellow, Campaign for Innocent Victims in Conflict; and Jon Tracy, Assistant Director, National Institute of Military Justice.

Ca, go ahead, please.

STATEMENT OF CA VA TRAN, PRESIDENT, VIETNAM ASSISTANCE FOR THE HANDICAPPED

Mr. TRAN. Good morning, sir.

On behalf of the board of directors of VNAH, I am very honored, very grateful to be here, to be included in this important hearing.

As you know, during the war in Vietnam, I worked as an interpreter for the U.S. marines for years. And when the war ended in 1975, I came to the United States. And fast forward 15 years, in 1990, I returned to Vietnam.

What I saw at the time in Vietnam with the people with disabilities, the children that were crippled by landmines, and especially the veterans that from the South Vietnamese Army that fought alongside of us were having a hard time without prosthetics or wheelchairs. So with the help of the Vietnamese friends here in the community and the wonderful American tradition of charity, in Virginia, I founded Vietnam Assistance for the Handicapped.

In 1992, when we first started the program in the delta, Mekong Delta of Vietnam, the disabled American veterans were the ones that helped us to start the seed money. And then, eventually, the Leahy War Victims Fund through USAID stepped in. And, sir, I am very grateful and very proud to be a grantee of the Leahy War Victims Fund ever since.

We have helped provide over 100,000 artificial limbs and wheelchairs to civilians. We are now working with the Vietnamese Government in 53 provinces and cities all over Vietnam.

USAID, as you know, at the time in the early 1990s, committed to humanitarian assistance in Vietnam, and we were so grateful to be part of that program. With the seed funding from the Leahy War Victims, we have been able to work closely with the Vietnamese Government at the local and central level.

We have mobilized the Vietnamese Americans here in America and other organizations, including The American Legion, a veterans service organization. We enlisted the help of the Paralyzed American Veterans, PVA, and others, AMVETS, that provided funding and technical support for us.

We worked with the Vietnamese National Assembly, the equivalent to our Congress, to develop regulations and standards on code and accessibility that today public facilities, markets, and schools in Vietnam are built with the American standard on accessibility. They are accessible for the Vietnamese disabled people to have access.

So from the seed funding that helps on the ground level, direct assistance, we now engage and work very closely with the Vietnamese at the national central level to develop the equivalent of the ADA, Americans with Disability Act, that soon in October of this year is to be enacted. This demonstrates the success of the partnership that we start out with the funds from the grassroots level.

And several months ago, beginning October 2008, as you know, USAID provided us the ability with a grant to expand the program to address the disability and assistance to technical to the health workers in Danang area under the Agent Orange Dioxin Program. This is a step forward in the partnership that we are so grateful to be a part of it.

Sir, I started out as a refugee, and we came to this country with nothing. And at the end of the war in April 1975, according to the Vietnamese Government estimates, there were almost 1 million people that suffered, wounded by war. And among them, in the south alone, there is an estimate of over 150,000 amputees.

I am not an NGO or a charity person by trade. I own a restaurant in McLean, Virginia. But I went back there, and it consumed me when we started out with the help of the fund. And even today, after 18 years, I am still out there trying to be helpful. And

we are so grateful for the cooperation of the Vietnamese Government, the community here, the Congress, the fund.

Sir, our latest partner in this is the Ford Foundation. With their special initiative on Agent Orange, it took us to a different level in the humanitarian assistance in Vietnam. And in this room today, Dr. Charlie Bailey is among us here today, and we are very grateful for that.

We want to do more because the need is enormous. We also—from this experience, we work with the Vietnamese Government to expand our program into Laos. We are now training the Laos Government officials on civil society in the disability legislation area, and we would like to expand beyond Laos into other neighboring countries. Sir, I am being honest with you, we would like to work with Myanmar.

So, from the very small, humble effort that just focuses on some of the allies that we left behind, we now have a partnership with big-time premier foundations, such as the Nippon Foundation, the Freeman Foundation—by the way, they are based in Vermont—and the Ford Foundation.

Senator LEAHY. I know the Freeman family very, very well.

Mr. TRAN. Yes, sir. So, and you were out there, as you mentioned earlier. Senator Daschle, Senator John Glenn, Senator Clinton, some Republicans, Senator Dorgan, and Madeleine Albright, and you witnessed firsthand what we do. We build the artificial limbs and wheelchairs from scratch in country. We are using people with disabilities, provide them jobs, and with American skill, we enlist the technical know-how from San Francisco State University. As a matter of fact, Ralf Hotchkiss has been out there and helping us.

So it has been phenomenal, and I am very grateful to be part of it, and I am very honored to be here today. And I wish that we can expand further into the neighboring countries and help the population out there. It is truthfully a good real fund that we would like to report to you and to the American people that we are very proud to be a part of it.

Senator LEAHY. Thank you. Thank you very much.

[The statement follows:]

PREPARED STATEMENT OF CA VA TRAN

Fact Sheet

Viet-Nam Assistance for the Handicapped (VNAH) is a tax exempted (501(c)(3)), developmental organization operating in Vietnam since 1990 with programs to improve the quality of life for Vietnamese with disabilities, through direct humanitarian assistance and through programs to promote the reform of laws and policies affecting the disabled.

Since the early 1990s, VNAH has been a recipient of support from the Leahy War Victims Fund (LWVF) and, over the years, has been an important contributor to the work of the Fund in Vietnam. VNAH has partnered with USAID, both through LWVF and through American Schools and Hospitals Abroad (ASHA), and other donors in programs improving mobility for the disabled, and building capacity of local rehabilitation service providers. VNAH works directly with the regional rehabilitation centers of the Ministry of Labor, Invalids and Social Affairs (MOLISA) but with the VNAH caseload handled separately from its general work. Starting with the center in Can Tho, in the Mekong Delta, VNAH now partners with five regional rehabilitation centers to provide services to needy disabled people across Vietnam. To date, over 120,000 prosthetic limbs, other assistive devices and wheelchairs have been provided to war victims and impoverished, disabled people by VNAH and its partners.

In addition to assisting the individual disabled regain mobility, VNAH has supported skills training, greater employment in mainstream jobs, and capacity building for service providers so as to effectively meet the needs of Vietnamese with disabilities. This included supporting two national skill training schools for the disabled, development of more inclusive employment services in 10 provinces in Viet Nam, and set up an Employer's Council on employment for the disabled, whose members included companies such as Ford Motor, AIG, NIKE and local corporations. All these resulted in gainful jobs for over 2,500 persons with disabilities through out Vietnam.

While these efforts and initiatives were badly needed and very welcome, it was clear that systemic change was needed in the face of the vast needs presented by almost twelve million Vietnamese with disabilities, VNAH recognized this need and directed its focus to a new challenge: assisting government agencies to develop and reform national policies so they can benefit most, if not all people with disabilities in Vietnam. Direct assistance to individuals living with disabilities would be continued with the support of private donors.

The first major step in this direction was in 1997, when the Committee on Social Affairs of the Vietnamese National Assembly invited VNAH to partner with the National Assembly in sponsoring a conference to review a draft of a new Ordnance on Disability presented by the Ministry of Labor, Invalids and Social Affairs. VNAH agreed and fielded a team of American experts to the conference, which was widely viewed as quit successful.

In 1998, USAID granted VNAH funding from LWVF for this new endeavor, which continues until the present. With VNAH advice and technical support, the Vietnamese government agencies have achieved the following important steps:

—Development and enactment of the Ordinance on Disability
—Establishment of the inter-agency National Coordinating Council on Disabilities (NCCD)
—Development and enactment of the barrier-free access code and standards for public construction
—Development and enactment of barrier-free access standards and regulations for public transport
—Inclusion of disability concerns in the Vocational Training Law
—Development and approval of a 5 year national action plan on disability to be implemented in all 63 provinces of Vietnam.

Currently, with LWVF funding administered by USAID/Vietnam, VNAH is supporting government agencies in drafting the first disability law and in revising provisions in the labor code that affect employment of the disabled.

The above achievements in policy reform and implementation have directly benefited around 3.6 million Vietnamese with disabilities and indirectly impacted several million more. These established stronger legal framework that protects the rights of the disabled and contributes to the sustainable development of Vietnam. These benefits will become even stronger with the completion and implementation of the new disability law.

These accomplishments also helped VNAH win the confidence of the host government agencies, and led VNAH to a new challenge: assisting in developing an enabling legal framework for Vietnamese civil society organization. VNAH has entered into formal MOUs with local government and National Assembly agencies to support the drafting of national legal documents governing Vietnamese non-governmental organizations. The support resulted in the draft law that was reviewed by the National Assembly in late 2006, as well as, sub-law regulations and guidelines. LWVF provided VNAH with seed funding, followed by ESF of the Department of State and other private donors, for this effort. VNAH supported travel by Vietnamese law drafters to study relevant good laws and practices in the United States and other countries, provided international technical expertise and support, and provided capacity building training for civil servants, practitioners and local NGOs.

VNAH is among the few international NGOs allowed to operate in the Central Highlands of Vietnam, an area usually off-limit to foreign assistance and visits. Since 2000, VNAH has provided several thousand prosthetic limbs and other assistive devices to war victims in the five provinces of the region. Many beneficiaries are from the ethnic minority groups. VNAH has built 69 elementary schools, training and boarding houses, installed several drinking water systems and trained midwives for remote villages of the ethnic minority. Currently, VNAH is supporting the disabled people in Kon Tum, a province that borders Laos and Cambodia, with funding from the Ford Foundation.

The LWVF through USAID has helped transform VNAH from a small charity organization to a professional developmental NGO that is capable of implementing a

wide range of developmental activities in Vietnam and Laos, and gaining funding from various public and private donors.

Other of VNAH's major past projects include:

—Mine risks education in Vietnam's DMZ area where UXO is still harmful, to prevent new injuries and accidents. Funding was from U.S. Department of Defense and Department of State.

—Introducing inclusive employment services and revision of legal document regarding employment of the disabled in Vietnam, with funding from the U.S. Department of Labor.

VNAH's current projects include:

—Provide rehabilitation and social supports to the disabled and capacity building for service providers in Danang City, with funding from LWVF/USAID Health Program for Danang.

—Construct a rehabilitation center in Danang City and facilitate the transfer of expertise in rehabilitation medicine from the United States to Vietnam. Funding is from ASHA/USAID and private donors. In addition, VNAH is assisting Vietnamese American and American organizations and individuals to support the disadvantaged groups in Vietnam. Every year, VNAH facilitates and organizes volunteer missions to provide services and training in Vietnam.

—Provide prosthetic limbs and other assistive devices and wheelchairs to poor Vietnamese living with disabled persons and training for rehabilitation technicians and health workers. Funding is from the Nippon Foundation (Japan) and the Freeman Foundation (United States).

—Support disabled people in Binh Dinh and Kon Tum provinces with rehabilitation and social services and capacity building for local health workers, with funding from the Ford Foundation.

For more information, please visit www.vnah-hev.org.

Senator LEAHY. Mr. Chromy.

STATEMENT OF JOHN CHROMY, VICE PRESIDENT, EXTERNAL RELATIONS, COOPERATIVE HOUSING FOUNDATION INTERNATIONAL

Mr. CHROMY. Senator Leahy, thank you very much for inviting me to join. After that presentation, I am a little stunned, and I almost wanted to stand up and give you a round of applause for this gentleman and for the work that you do. So I think it is more than deserved.

I submitted to you a written report with the key information about what is being done with the Marla funds in Iraq. I am privileged to—consider it both a privilege and an honor be invited here to talk with you.

A privilege because I have traveled in many countries and worked professionally in more than 15, and I know there are very few countries where the government invites people to come in and petition the government and speak their minds to the representatives of the government. And here, we not only get to do that, but we get it at your invitation, and it is a constitutional right as well.

I am honored to talk also because I am speaking on behalf of not just CHF International, my organization, but three partner organizations—Agricultural Cooperative Development International/Volunteers in Overseas Cooperative Assistance (ACDI–VOCA), International Relief and Development (IRD), and Mercy Corps—all of which are implementing the Marla Ruzicka funds all across Iraq.

And I am honored to represent them because they have been in Iraq since 2003. They never left. They stayed through it all. They never operated or required or requested military support for their efforts. They stayed and lived and worked in those communities throughout this whole operation. I have great admiration for all of them, and as I say, I am proud to represent them here today.

Over the last 2½ years, we—the four partners have implemented more than $15 million worth of Marla funds in 400 and some communities, over 1,000 projects, doing exactly what was described earlier by others—helping individual families, particularly families, but individual victims of the military operations from the U.S. forces and the coalition forces.

We are restricted to assisting only the victims that were injured by coalition and U.S. operations. We do not respond with Marla funds to those injured by insurgent suicide bombings and so on. That is a restriction imposed by USAID guidelines.

The actual implementers of this are essentially our Iraqi staff, people that we have trained to carry out these efforts to meet the guidelines. We received assistance from Columbia University professors in training them how to handle the psychosocial problems that these families and children face, and it is the Iraqi staff who are making this work.

What we have learned, Mr. Chairman, is Iraq is full of many, many good and capable people. And we have been fortunate, all of our four partners, to recruit these people, train them to administer this program, and they do so effectively and with honesty and integrity, and their efforts can be audited.

They also do it with great pride and great sensitivity to the families that have been injured in all of this. So I share that with the subcommittee and with my colleagues because I think it is really important to understand that the people of these countries can do very, very well many of these things. And for them to be able to do it gives them a lot of pride and satisfaction.

The investment we made and you made and the leadership you have provided in making this happen strikes me as not only commendable and important and critical to these families, but it also strikes me that we need to put it in perspective. Over the last number of years, we have been spending something near $12 billion a year—a month in Iraq pursuing a whole series of efforts, initially the war and then the counterinsurgency efforts, the suppression of the violence, and the training of a wide variety of—development of a wide variety of things in Iraq.

Fifteen million dollars for Marla is the equivalent of 1.5 hours' time in those 3 years, 1.5 hours at $12 billion a month. And to me, that is a sheer misunderstanding of what happens to human beings when war operations take place.

I commend what we do, but I hope we put it in this perspective. I hope your colleagues would stop and think about this. And I would hope also that as the military actions wind down, we are able to bring our combat people out, and there is a future that we not forget, as our good friend here from Vietnam has shown us, this goes on for a long time. A long time after the military actions are over.

And we should set ourselves on a course with the Government of Iraq to build an ongoing capacity within the nation of Iraq, using the government's resources, to support these people for the next generation or two.

[The statement follows:]

PREPARED STATEMENT OF JOHN W. CHROMY

Background

Since September of 2006, CHF International and three sister international non-profit organizations have been implementing the Marla Ruzicka Iraqi War Victims' Fund on behalf of the American people of, as directed by the United States Congress through a Cooperative Agreement administered by the United States Agency for International Development (USAID). The other implementing partners include:

—ACDI–VOCA

—Mercy Corps International (MCI)

—International Relief and Development (IRD)

The four programs combined have disbursed slightly more than $15 million via 1004 projects assisting civilians and communities who suffered loss of life, limb, property and economic livelihoods as a result of military actions taken by United States and Coalition forces. The projects were implemented in nearly all provinces and cities of Iraq including such conflicted areas as Baghdad, Basra, Mosul, Babil, Najaf, Diyala and Al Anbar province.

The eligible beneficiaries are identified by the Iraqi staff of the implementing partners in conjunction with local community leaders, community Action Group members, police, medical and hospital personnel and tribal elders. The victim's status had to be documented with the assistance of the local government and witnesses where possible.

The funds were not distributed as cash payments but rather are used to assist the victims and their families to obtain needed medical care, re-build homes or businesses and in many cases develop a means of economic livelihood. Since the program was being administered in the midst of conflict and insurgent activities, the staff of each implementing partner was given considerable discretion in working with the communities to select appropriate means of supporting the war victims. Typical projects included the provision of long term medical care, prosthetic limbs and physical therapy, renovation of residences, re-stocking of businesses, transportation to specialized medical treatment (in some cases to Amman, Jordan), provision of livestock and the establishment of retail stores/kiosks to provide income generation opportunities for families that lost their normal breadwinner. A large portion of the economic projects funded were provided to women widowed by the conflict and their children.

One of the implementing partners chose to focus the majority of its War Victim resources on community reconstruction projects with substantial assurance that the community as a whole would then care for the individual families victimized by the military activities.

Over the course of fiscal years 2007 and 2008 the four implementing partners completed 1,004 victim assistance projects at a total cost of $15,685,194 congressionally appropriated funds. The local communities contributed $996,887 and local Iraqi government bodies contributed $903,352. These projects directly assisted slightly more than 40,000 war victim family members. In late 2008 The Marla Ruzicka War Victims Fund was further funded by the Congress and presently continues to operate in Iraq under the management of USAID which has Cooperative Agreement arrangements with the four implementing NGOs.

Comments and Recommendations

The above describes the program and provides the numbers. More specifically the communities, affected families, Iraqi implementing staff and implementing partner organizations would like to bring to the attention of the Congress the following key points:

—The victims and their families have been nothing but deeply grateful for assistance received under this program. Many were traumatized into inaction by the misfortune that had befallen their family. The arrival of the Marla War Victims Fund staff and community leaders, bringing assistance resources revived the families and made it possible for them to begin the recovery process. While not explicitly advertised that the funds came from the United States, this fact was known within the communities and the victims often expressed their thanks to the people of America for the assistance provided.

—Local community leaders, government officials, hospital/police/medical staff have generally been cooperative and trustworthy in helping select the neediest beneficiaries and ensuring the resources were properly provided. Corruption or greed was generally not an obstacle.

—The Iraqi implementing staff members have taken great pride in their ability to properly manage the programs, meet audit requirements and assist families

in distress. It gives them great satisfaction that they can positively help their fellow citizens of Iraq amidst all the violence and destruction.

—The participation and support of community leaders, Community Action Group members, tribal elders and medical staff were key elements to the success of the program and a clear indication that communities can be trusted to use funds efficiently, effectively, contribute their own resources and in some cases reach across ethnic and political lines to achieve help for wounded people.

—In truth this effort not only helps to heal the wounds and trauma of the victims but it also "heals the community" by providing positive course of action, local cooperation and resources to begin binding up the wounds of war.

—The implementing partners are especially proud of their ability to assist 8,744 people establish new businesses and/or other income generating opportunities. The ability for war victims to be able to again support themselves in a kiosk or a service shop creates goodwill and pride beyond measure, especially for those recently widowed and needing to fend for themselves.

—The provision of medical care, prosthetics and possibly psycho-social assistance is critical and should remain a key component of victim assistance program.

All that said, this is all good news and provides a strong sense that the Members of Congress were wise in authorizing and appropriating funds for the Marla Ruzicka War Victims effort in Iraq and its related programs in Afghanistan. However, a very wise friend of mine, Mr. Sargent Shriver, often told me; "Don't tell me the good news—good news makes me complacent and therefore weak. Tell me the bad news so I can know what I must overcome to make the program great".

So to push us all to greatness in the future, here are the challenges and difficulties we face:

—USAID's guidelines for the Iraq War Victims Fund definitively restricted benefits to those victimized by the actions of U.S. military and Coalition forces. In Iraq there are many people who are injured or killed by the actions of the insurgents opposing the Coalition forces. Often it is difficult after a firefight to determine which victims were injured by which forces—implementers' staff members have no capacity to analyze shrapnel, bullets or explosive residue to determine the source of the damage. Similar restrictions are not imposed on the implementers of war victim's funds in Afghanistan. It is wise and necessary to critically analyze this decision—one does not wish to place the entire cost burden on the American people but it would be useful to consider the resulting tangible benefit in positive public sentiment towards the Coalition Forces, the U.S. mission and the Government of Iraq. (this topic has been raised by the USAID Inspector General in Audit report # E–267–08–002–P—dated April 2008)

—Consideration must be given to longer term mental health care particularly for children traumatized by war related death of loved ones. It is relatively easy to repair the house and even create a new retail shop—but healing the scar tissue in the minds of children is a much more daunting and time consuming task.

—The fund levels have allowed the reaching of only a modest portion of the civilian victims of the conflict in Iraq. While estimates on death levels vary from 100,000 to 300,000 plus, we do know that the 40,000 or so directly assisted by the Marla Ruzicka Iraq War Victims Fund leaves a vast number of victims to fend for themselves with little or no assistance. Perhaps it is time to turn to the Government of Iraq for additional matching funds to meet the larger need.

—In the now infamous words of Charlie Wilson, "What is the end Game?" This brings us to the larger question—-where do we go from here? Current appropriated funds will be exhausted in early 2010. CHF's efforts to gain an audience with the Ambassador of Iraq to discuss the future of this and other programs have been to no avail. Perhaps a joint effort with Senate leaders, the State Department's Ambassador to Iraq, Representatives of USAID and the implementing partners to bring this to the attention of senior members of the Government of Iraq would be an appropriate strategy. The End Game could be an Iraqi government funded NGO staffed by many of the Iraqi people trained under the Marla Fund become a long term implementer of support for victims of violence and conflict in Iraq. This or some similar strategy needs to be discussed and implemented in the remainder of 2009 and 2010.

I thank the Chairman and the members of the Committee and their staff for this opportunity to present on behalf of the CIVIC organization, which is the godparent of the Marla Funds, the four implementing NGOs, the Iraqi staff who have so bravely administered the program amidst grave danger to themselves and on behalf of the people of Iraq injured by the international conflict and its subsequent insurgency and insurgency suppression operations.

Mr. Chairman, it has been a privilege and an honor to testify before you and your colleagues today.

Senator LEAHY. Unfortunately, as we have discovered, this is no longer the textbook case that peace treaties are signed, armies march away, tanks withdraw, and all is peaceful again. That is not the situation.

Thank you, and I am glad you highlighted the amount of money spent on the Marla Fund and what percentage it is.

Ms. Gaston, we will also put any written statement you have into the record. Let me turn to you.

STATEMENT OF ERICA GASTON, AFGHANISTAN FELLOW, CAMPAIGN FOR INNOCENT VICTIMS IN CONFLICT

Ms. GASTON. Thank you very much for having me.

My name is Erica Gaston. I am the Harvard law fellow for the Campaign for Innocent Victims in Conflict.

I have spent the last year in Afghanistan, and most of my last year has been spent going in and just sitting in the living rooms and talking with the Afghan families who are the beneficiaries of some of these programs that we have been talking with.

For the forthcoming report—the report, rather, that we recently released, "Losing the People," I interviewed 143 Afghan civilian victims of conflict since 2001. We were very pleased that the report got significant attention not only in different media outlets, but also in the Government and military sector because we think just getting this information out there and stressing some of the issues of war victims that you, Senator Leahy, have been the champion of for so many years is really critical.

And we were very honored, last week I had the opportunity to brief General Petraeus personally about these issues. So we are hoping that in the coming year, all the things that I and all of the speakers here have been talking about will have an impact.

What I wanted to talk to you about specifically today is just to share with you some of what I learned in particular about compensation and victim assistance in Afghanistan from the point of view of the Afghans I spoke with, and particularly what that meant in terms of the Afghan Civilian Assistance Program.

When we looked at our report for CIVIC, we tried to survey what are the different international military actors doing, what is the Afghan Government doing, and also what are different foreign governments doing?

As you may know and as I think Jon Tracy will speak about a little bit more at length, the different international militaries in Afghanistan have a number of different compensation and condolence mechanisms going to civilians. But we found that the Afghan Civilian Assistance Program that you really have championed for so many years was the only program of a foreign government specifically helping victims of conflict.

Not only was it the only program sponsored by a foreign government specifically for this purpose, but because so many of the compensation and condolence mechanisms by different North American Treaty Organization (NATO) countries are so ad hoc and for most of the last 8 years have been virtually nonexistent, for most Afghan victims of conflict, ACAP was the only thing that they received in terms of a form of redress. So it was hugely important.

Just to give you a little bit of background and kind of follow up on what our USAID counterpart told us in the last panel, the primary vehicle that ACAP reaches out and helps families with is sort of a tailored livelihood assistance package. So, for example, I met a man who was injured by a cluster munition incident in the western province in Afghanistan in 2001, and he lost one of his legs. He was very poor. He was actually already orphaned by a previous war and had no means to support himself.

The Afghan Civilian Assistance Program went in there, helped him, gave him livelihood training, and now he is actually a thriving tailor. He even gave me one of the shirts that he made. I can't tell you how grateful he was and how successful the program was in intervening.

I also interviewed, for example, a woman who is in a province near Kabul. And unfortunately, she lost her husband and her 7-year-old son due to a suicide attack there. It was really—talking to her was one of the most emotionally difficult experiences. She learned about the death of her husband literally when pieces of flesh landed in her front yard. It was absolutely horrendous.

And more importantly for her perspective, she now had to figure out how to support her four children, her four little girls. And it is very difficult for Afghan women to find work in Afghanistan. So the Afghan Civilian Assistance Program went in, helped to make sure they could keep their home, and was working on giving her livelihood support that she can support her family through tailoring.

So these are just a couple of the stories that I learned. There are so many, and just as you can remember, you know, the color of the wheelchair, I could vividly tell you what the room looked like when I talked to these people. And I am really honored to get to share some of this with you because so many of them told me, please, tell this to your Government. Please tell this to the people that we are very grateful for this, and we appreciate it.

So I do think that it is providing a really critical service in Afghanistan. I also do want to highlight some of the issues that they are still working on, I think, and that might be relevant in terms of future funding and direction on terms of this program.

In the past, one of the weaknesses of the ACAP program has been that it has been slow. They are trying to get more staff for this, and I am sure more funding to support that staff would be helpful in terms of because it is such a tailored livelihood support program, it takes a lot of manpower. It takes a lot of resources.

So any support in terms of that, I think, would improve the speed with which they are able to get to victims of conflict.

Another problem that will be really an issue in 2009, I think, in particular is that, of course, it is very dangerous often to go into some of these conflict-affected areas. They may end up, in addition to sort of the tailored one assistance packages, they sometimes provide larger community grants, like a retention wall or a school or things like that. And particularly, they have to rely on those in these conflict-prone provinces. They tend to be quite expensive, and we may see an increase of them, I think, in 2009.

And then a final kind of point is that, as you might imagine, there aren't formal things like death certificates or ways nec-

essarily to establish losses in Afghanistan. It is very difficult to make sure that those that they are helping are eligible and that they are identified for the losses. And one of the problems in doing that in the past has been coordination.

Just to give you an example, by my count right now there are seven different military, governmental, NGOs, agencies that have independent databases on civilian casualties, and none of them share with each other. Most military Provincial Reconstruction Teams (PRTs)—seven. Most military NPRTs don't know about the ACAP program, even though they try and reach out every time a new troop rotation comes in.

So simple things. You might imagine like when U.S. forces come across a victim who is eligible for this program, they don't necessarily know to refer it on or just to confirm that something has happened to them, which helps in verification. There are a couple new staff members working with USAID in Kabul, and I think they are aware of this issue. So, hopefully, they will be able to pass the word a little bit about what this program is doing.

[The statement follows:]

PREPARED STATEMENT OF ERICA GASTON

INTRODUCTION

Over the course of 2008, I lived in Afghanistan as a fellow for the Campaign for Innocent Victims of Conflict (CIVIC), documenting the concerns of Afghan civilians in the most deadly year yet for Afghan communities. The overriding message that I and my CIVIC colleagues learned from interviewing more than 143 Afghan victims of conflict is that recognition, compensation, or other assistance is both desperately needed and possible in Afghanistan.

There are mechanisms working on the ground to provide this assistance—notably the Congressionally funded Afghan Civilian Assistance Program (ACAP) that will be the focus of this testimony. Whereas compensation and cash condolences by the Afghan government and international military forces were generally ad hoc, inequitable, and under-resourced, the ACAP program's mandate to seek out and help families affected from 2001 onward did much to address the inequities and disparities in victim assistance. Because it provides in-kind, tailored livelihood assistance, it also did a much better job of addressing lingering medical, livelihood and other humanitarian needs necessary to help families get back on their feet.

Compensation and victim assistance is both a strategic and moral imperative for the international community, and particularly the U.S. government, in Afghanistan. I would like to share with you some of what will then offer a sample of the needs and issues that Afghan victims of conflict raised in conversations with CIVIC, and how well the ACAP program succeeded in meeting these needs. Finally I will offer some concluding thoughts and recommendations on the overall system of victim assistance and compensation in Afghanistan.

CIVILIAN COMPENSATION AND REDRESS: A STRATEGIC AND MORAL IMPERATIVE

Since the initial U.S. invasion in 2001, the lack of a clear, coordinated strategy to address civilian losses has been a leading source of anger and resentment toward military forces. Twenty billion USD of military expenditures each month and billions more in support operations and humanitarian aid still leaves the many civilians harmed by international troops with nothing. As recently as 2006, 83 percent of Afghans said they had a favorable view of U.S. military forces.[1] Two years later that favorable view has turned into scenes of frequent, widespread and sometimes violent protests over civilian deaths and what they perceive as a lack of concern by international forces.

Avoiding harm to civilians altogether is the goal. When harm nonetheless occurs, the imperative becomes easing the suffering of any civilian suffering losses. Afghans

[1] The poll was developed by the Program on International Policy Attitudes and fielded by ACSOR/D3 Systems, Inc. from November 27 to December 4, 2005, with a sample of 2,089 Afghan adults.

expect recognition and compensation, and they ask for it when their families or communities are harmed. There is now acknowledgement at the highest levels that NATO mission's failure to address these concerns is sapping public support. In his visit to Afghanistan in September 2008, U.S. Secretary of Defense Robert Gates said, "I think the key for us is, on those rare occasions when we do make a mistake, when there is an error, to apologize quickly, to compensate the victims quickly, and then carry out the investigation."

This recognition has already come too late, and unless it is fully reflected in the new Afghanistan strategy, civilian casualties and the failure to acknowledge and redress them will be NATO's Achilles heel in Afghanistan. Over U.S.$40 billion is spent each year by foreign military forces, including huge amounts on "soft power" counterinsurgency initiatives. Yet a single incident in which military forces harm civilians, without any acknowledgement, apology or compensation can turn a community away from the international effort and the Afghan government.

Victim assistance is equally critical on humanitarian grounds. In 2007 and 2008, an estimated 3,641 civilians were killed by parties to the conflict in Afghanistan.[2] For every civilian killed, as many or more are injured, lose their homes or livelihoods. For countless Afghan families living on the margins, the loss of a breadwinner, high medical or funeral costs, or the financial burden of supporting disabled or dependent relatives can make even basic survival difficult. For each family struggling to recover from losses, there are multiplying ripple effects on Afghanistan's continuing development and stabilization.

No amount of compensation or assistance can bring back a loved one. Yet the killing of a family member can often be an invitation for generational revenge, made worse by ignoring that loss. Providing specific relief to Afghan victims of conflict is both a strategic and a humanitarian imperative for international forces.

CIVILIAN SUFFERING AND IMPORTANCE OF VICTIMS' ASSISTANCE

In the past 2 years, security has deteriorated dramatically in Afghanistan and civilians have borne the brunt of increased violence. The year 2008 proved to be one of the deadliest years for civilians since the conflict began in 2001. The United Nations recorded 2,118 civilian casualties in 2008, an increase of 40 percent from the 1,523 recorded in 2007.[3] No accurate estimates of civilian casualties since 2001 exist, although the number is likely well over 8,000, based on available data.[4]

In the last 2 years, fighting has spread geographically. As a result, more communities are suffering and governmental and humanitarian actors are finding it increasing difficult to address their needs due to security concerns.[5] According to UNAMA: "Large parts of the South, Southwest, Southeast, and Central regions of Afghanistan are now classified by the U.N. Department of Safety and Security (UNDSS) as 'extreme risk, hostile environment'."[6] Staff from aid organizations are increasingly subject to direct attacks and threats. UNDSS recorded 30 humanitarian workers killed and another 92 abducted between January and August 2008.[7]

As a result, the majority of families and communities caught in the conflict have been left to recover from their losses on their own. CIVIC spoke with many civilians who years after being harmed still experienced grief and psychological trauma from the incident. This lingering effect continued to prevent them from resuming a normal life.

Beyond significant emotional suffering, a single incident may have serious long-term economic and social repercussions. The Afghanistan National Development Strategy placed "war survivors" as one of two "priority groups" in terms of improved social protection.[8] Civilians told CIVIC how losses from conflict severely damaged or destroyed their livelihoods and economic support bases. Medical costs and funeral expenses often forced civilians to spend their savings and/or take out loans that would take years to pay off. Communities struggled to absorb the impact when multiple families were hit, or when they lost a community leader or community infra-

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[2] United Nations Assistance Mission in Afghanistan, *Protection of Civilians*, United Nations, January 2009, 1.

[3] United Nations Assistance Mission in Afghanistan, *Armed Conflict and Civilian Casualties*,1.

[4] Campaign for Innocent Victims in Conflict, *Losing the People: The Costs and Consequences of Civilian Suffering in Afghanistan*, 8.

[5] International Council for Security and Development, *Struggle for Kabul: The Taliban Advance*, (London: International Council for Security and Development, December 2008), 5.

[6] United Nations Assistance Mission in Afghanistan, *Armed Conflict and Civilian Casualties*, 3–4.

[7] Ibid., 4.

[8] Government of the Islamic Republic of Afghanistan, *Afghanistan National Development Strategy*, Social Protection Sector Strategy, (Kabul: Government of the Islamic Republic of Afghanistan, 2008), 125.

structure. Families and communities across Afghanistan, many already struggling, were forced to assume the additional burden of supporting dependents of the deceased, or relations whose homes or communities had been destroyed.

CIVIC's interviews identified five specific situations confronting civilians affected by the war: (1) the loss of a family member; (2) the injury of a family member; (3) living with an injury or disability; (4) living as an internally displaced person or refugee; and (5) wider community ramifications.

Loss of a Family Member

Over two-thirds of the civilians interviewed by CIVIC have lost family members during the current war. The last 2 years saw a sharp rise in civilian casualties, leaving more families destroyed and grieving. The death of a family member puts significant financial strain on civilians in Afghanistan, including oft-overlooked expenses for funerals and remarriage. The burdens are particularly acute following the death of a principal income earner and for vulnerable social groups such as widows and orphans.

Many of the civilians killed in Afghanistan were adult men, the principal breadwinners for their families. When a breadwinner dies, it is customary in Afghanistan for other family members to provide for the surviving dependents. With resources and jobs in short supply, some survivors are now finding it impossible to feed all the people under their care. A survivor from the July 17, 2008 bombing of the Zerkoh village in Shindand lost both his brothers in the air-strike. He must now support not only his own family but the family of his two brothers—a total of 25 people—despite having lost much of his property in the bombing.2 Similarly, an elderly man, Said told CIVIC how he became the sole income-provider for a family of twelve after his son was shot by ISAF forces for approaching a cordoned-off security area. Said described how he worked as a daily wage earner but "I can't find enough money for my family. I'm in trouble."

The necessity to earn money after the death of a breadwinner also affects the education of children who are forced to find jobs rather than attend school. Two young brothers, Karim and Hasan, described how their father had been riding in a rickshaw on his way to a wedding party when a suicide bomb directed at a military convoy exploded. International forces returned fire and the boys' father was killed. Although they were still only in high school, the brothers dropped out of school and started work full-time so they could support their family of seven brothers and two sisters.

The death of a son or brother who assisted in a family business also leads to a reduction in income or a significantly added workload for the remaining breadwinner. One boy who helped his father work an ice-cream truck in Kandahar was killed by a suicide bomb when he went to get a haircut. The father, Nazar, said he could not cope without the assistance of his son: "I wasn't able to keep working because my job requires a lot of physical exercise. I have to move and chop the ice and move the truck. My boy was giving ice cream to customers and helping me. I would get some free time when my son was there."

According to an October 2008 report by the Food and Agriculture Organization (FAO), "widows, especially in rural areas, remain one of the most vulnerable groups in the country."[9] Women are excluded from most types of employment in Afghan society.[10] Typically, the only way for widows to support their families is to be taken in by other members and/or marry one of the deceased husband's brothers. One widow, Samira, managed to find some employment after her taxi-driver husband was killed in a U.S. aerial bombardment in 2001. Her income, however, was insufficient to support the family and she was forced to rely on the generosity of various relatives. She told us how it was difficult to support all her children and that she started washing clothes, housekeeping and taking any other small job to earn money. Eventually, she could not survive alone because "our family could no longer afford a home of our own and [so] we were passed from one relative to another." Samira described how the economic situation is causing her children to suffer: "If my husband was alive my children would have everything like other girls and boys. They ask me sometimes for things . . . normal things that all children ask for . . . a son would ask his father for a bicycle, a computer, a daughter for pretty

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[9] Internal Displacement Monitoring Center, *Afghanistan: Increasing hardship and limited support for growing displaced population*, Norwegian Refugee Council, October 28, 2008, 77.

[10] Ibid., 61 (noting that the "economic exclusion" of widows and their children together with their "social marginalization" complicated the reintegration of IDP and returnee widows); Government of the Islamic Republic of Afghanistan, *Afghanistan National Development Strategy, Social Protection Sector Strategy*, (Kabul: Government of the Islamic Republic of Afghanistan, 2008), 27.

things. Everyone has a wish. I wish my husband was alive so they could have all these normal things. So they could have a normal childhood."

Orphans in Afghanistan find themselves in a desperate situation. United Nations Joint Programme on HIV/AIDS (UNAIDS) estimated that, through 2007, 2.1 million children had lost a father, a mother or both.[11] There are likely even more now, given increasing rates of civilian casualties. These children are extremely vulnerable members of society and, when they do not have extended family members to provide for them, they frequently end up in orphanages or on the street. CIVIC spoke with children in Jalalabad orphaned by the July 2008 air-strike by International Military Forces (hereinafter "IMF") that hit a wedding party. One 8-year-old boy called Rafullah lost both his parents in the same air-strike and now lives in social services. His three sisters are also in care.

The burden of funeral and remarriage expenses was mentioned by a number of individuals interviewed by CIVIC. While it might seem callous to talk about the expense of remarriage in the wake of tragedy, this is the reality for many men given the Afghan social structure. For them, remaining unmarried was unthinkable, particularly if they had small children needing care.

Injury of a Family Member

Estimates of civilians killed by the conflict in Afghanistan show only one slice of the picture. For every Afghan killed, as many or more are injured by conflict, often with equally devastating consequences for their families. Many who are injured can no longer work or contribute to their family's livelihoods because of their disabilities. This loss of income or livelihood support, compounded with initial or continuing expenses for medical treatment, can be devastating for the many Afghan families already struggling economically. The emotional costs of injuries are impossible to quantify.

Families suffer significant financial burdens when a primary breadwinner is injured such that he (and occasionally she) is no longer able to earn a wage or contribute to the family livelihood. One farmer, the sole provider for his family, told us how he was injured in a suicide attack and could no longer work as effectively in the fields. His family felt the impact, as he brought far less produce home.

Expensive hospital bills and continuing treatment of an injury create heavy burdens on many Afghan families already struggling to survive. Such expenses put families into debt, forcing them to sell land and livestock or personal belongings, such as cars and motorbikes, in order to raise cash. One man whose son was injured described how, "in order to pay for the hospital treatment, we sold half our land to pay for the bills."

Many injured civilians become dependent on the full-time care and support of their families. This naturally puts financial and emotional pressure on the family member-turned-caretaker. One man who lost sixteen members of his family in an air-strike in Kandahar described the long-term care now required for both his brother and sister, injured in the same attack: "My sister cannot eat by herself anymore. And my brother lost one leg and is paralyzed in the other leg. He is in a wheelchair."

Increasingly, international organizations, non-governmental organizations and the Afghan government are developing broader medical, social, and vocational services for those with disabilities, but the network of support for the disabled, including those disabled by conflict-related injuries, is thin. In Afghanistan, life is hard enough for the perfectly healthy; there are few extra resources or accommodations for the disabled. Additionally, stigmas against the disabled create significant social barriers against holding a job, going to school, marrying or other aspects of daily life.

The overall weakness of the health system offers few opportunities for follow-up treatment after an injury—including operations, prosthetic limbs or physical therapy. A very small minority of Afghan families can afford to send their relatives abroad, so individuals live with crippling injuries that in other countries could be entirely overcome. Many organizations and hospitals in Afghanistan seek resources to provide free or subsidized treatment for injured survivors, but the overwhelming need and widespread poverty mean their limited resources cannot keep up with the immediate treatment and long-term care civilians require due to the conflict.

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[11] United Nations Children's Fund, *Best estimates of social indicators for children in Afghanistan*, 1990–2005, Islamic Republic of Afghanistan, (Kabul: United Nations Children's Fund, May 2006, 68.

Loss of Property

Damage or destruction of civilian property due to the ongoing conflict is even more pervasive than civilian deaths and injuries. Decades of conflict in Afghanistan, the overall poor level of development, and the geographic isolation of many communities combine to make property loss a particularly severe and long-term hardship. Many families do not have the means to rebuild a home or replace livestock or other livelihood supports. Even where they do, it may take a long time to get materials given supply and transport limitations across the country. In the meantime, these property losses can leave families homeless and destitute, leading to malnutrition or other suffering.

Air-strikes are one of the most prominent causes of home destruction. In particular, Human Rights Watch found that responsive air-strikes called in to support ground troops are less accurate and increase the risk to civilian property.[12] Insurgent tactics of firing from homes or villages and then fleeing before IMF air retaliation has led to the destruction of many homes, particularly in the south. When homes are destroyed, civilians must either find large sums of money to rebuild or they become refugees or internationally displaced persons (IDPs). Moreover, when a house is destroyed gone too are all the family's personal possessions, livestock and vehicles. Many families told us they had to start again from scratch, with just the clothes on their back.

CIVIC interviewed one family in Herat whose house was destroyed in an air-strike that also killed the father: The house was completely destroyed and burned. . . . After the incident, we lost everything: our two cows were killed, the motorbike was blown up, our six turkeys were killed. We were only able to bring out half of two carpets. Then, after the incident, we moved to our aunt's house in another village in Herat province. When we came to [our] aunt's house, there was just one small room. We started from zero."

The economic consequences can be equally dire when family businesses or other livelihood support is destroyed. Civilians who lost their livelihoods repeatedly told CIVIC that without a means of income they could not support any injured or dependents of the deceased or otherwise rebuild their lives. Haji Mullah in Kandahar owned a nursery where he grew and sold potted plants. In April 2007, a suicide bomb exploded outside his shop: My nursery shop was damaged and about 800 flower pots were destroyed at a cost of around $3,200. This was my whole budget. I was selling them and getting money to feed my family. But now although I have started the business again, I have had to borrow money to do it and I became poorer.

In an agrarian society like Afghanistan, air-strikes damage agricultural land and livestock, not only destroying a family's livelihood but taking away their basic means of survival. One man named Abdul who fled from air-strikes in the Shindand valley of Herat told CIVIC how his farm and livestock were destroyed by an air-strike: I had cows, sheep, goats, they were all killed. Now I have nothing for my family. I could still manage to look after my family if only I had that."

Living as an Internally Displaced Person or Refugee

Persistent fighting and insecurity force many families to flee their homes and communities. With nowhere to live, they become refugees or (IDPs). According to the Norwegian Refugee Council (NRC)'s Internal Displacement Monitoring Center, ongoing conflict has led to the displacement of tens of thousands of Afghans each year since 2006.[13] An estimated 44,000 civilians were displaced in the first half of 2007 alone.[14] They are now one of the most vulnerable groups in Afghan society for, as the NRC Secretary-General has explained, "[t]hey may not only have lost their homes, family members and livelihoods, but they are receiving practically no support. The tragedy for these people is that as their needs are rising, our ability to reach them is dramatically decreasing."[15]

IDPs CIVIC interviewed told a common story: fleeing in response to immediate fighting or bombing, often grabbing what few possessions they had, and returning (if possible) to find everything destroyed or stolen. "We left that same night. Some of our family members left even their shoes. . . . After 4 days I went back to the

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[12] Human Rights Watch, *Troops in Contact: Airstrikes and Civilian Deaths in Afghanistan*, (New York: Human Rights Watch, September 2008), 3.

[13] Internal Displacement Monitoring Center, *Afghanistan: Increasing hardship and limited support for growing displaced population*, 9. ("The conflict is estimated to have displaced tens of thousands of people every year since 2006, but their number has been impossible to determine due to a lack of access to the conflict zones.")

[14] Ban Ki-Moon, *Report of the Secretary-General on the Protection of Civilians in Armed Conflict*, United Nations, October 2007, 2.

[15] Siri Elverland, "Press Release: Worsening Situation for IDPs," Norwegian Refugee Council, October 28, 2008, http://www.nrc.no/?did=9348233.

site but when I went to see my house, it was destroyed and nothing was there." The decision to flee, even for a few weeks, carries heavy economic and personal consequences. Away from their homes, communities, and their family's source of income, many refugees and IDPs depend on handouts or day labor to survive.

According to one woman in an IDP camp outside of Herat city: "Our life is very difficult compared to up there in the village. We used to have possibilities up there . . . we could walk and chat with our neighbors. You know if relatives are together they can solve their problems together. For example, all our relatives had agriculture, had fields, had melons. We could just go to their fields and eat them when we were hungry. Now we have nothing. I have all these children and I cannot provide for them."

The Director of the Department of Refugees and Repatriation (DORR) in Herat estimated that in the three IDP camps in the Herat city area, 60–65 percent could not support the basic needs of their family. Similar problems exist in IDP camps around Afghanistan—and particularly in the east of the country where many civilians are being forced to leave refugee camps in adjacent Pakistan, either because of increased fighting there or because of Pakistani government decisions.

Wider Community Impacts

Civilian losses, such as a school, road, water system, or bridge, have far-reaching and community-wide impact. If an elder or teacher is killed, it can take a generation for the community to recover from the loss. When incidents affect many families in the same community, the burdens are shared and can have long-term consequences. Patterns of fighting in a given area limit available employment opportunities, international and local aid or government services.

Compounding physical or livelihood losses are the emotional and psychological burdens for a community trying to go about its ordinary, daily business. Nighttime searches by international forces or general intimidation tactics by AOG can create a climate of fear across an entire community. Frequent bombings or ongoing fighting can leave even those without tangible losses with feelings of hopelessness, anger, and despair.

In November 2007, a suicide bomber targeting Italian troops killed nine civilians and injured many others. The most respected community elder, who had helped lead disarmament and peace negotiations among many tribes in the area, was also killed. His loss is irreplaceable, community leaders said. A local aid worker in the Western region of Afghanistan told CIVIC he was working on delivering aid to a community in the Shindand valley of Herat province for over a year. The only way to access the valley was under the protection of a local community leader. After that leader was killed in a U.S. airstrike on July 17, 2008, the aid worker said it would be impossible to reach those affected communities.

Large-scale damage stretches community resources and affects the quality of life even for those not directly harmed by the incident, often for many years after the incident. CIVIC visited a community affected by a U.S. air-strike in Herat city on October 22, 2001. The air-strike reportedly missed a military target and directly hit an area within the city, damaging or destroying the houses of forty-five families, killing twelve and injuring tens of others. According to the father of one family, everyone he was close to was affected: "One of the bombs landed in our yard. The other landed on my brother's house, the other my neighbor here, the other my neighbor there."

When CIVIC visited the area 7 years later, the community was only just recovering. Even those who were spared direct harm complained about a general deterioration of their quality of life, and that they had received no help to recover. The strain of recovery can be more pronounced for communities isolated by security conditions. In February 2002, U.S. air-strikes caused widespread damage to a small village called Shar-E-Cott in the southeastern province of Paktia. Multiple families were directly harmed; infrastructure damage to the town itself and to the surrounding roads impoverished the entire community. In part because of its isolated location and because of deteriorating security following the air-strikes, the community was cut off from almost all emergency relief or development aid. Although road access has recently improved through mass infrastructure projects, increased fighting and Taliban attacks still restrict the supplies that can reach the community.

AFGHAN CIVILIAN ASSISTANCE PROGRAM

Some international military forces, and Afghan President Karzai, provide different amounts and types of compensation or cash "condolences" where the ongoing conflict has unintentionally harmed civilians. In the past though, these compensation and condolence mechanisms have been sporadic to non-existent in terms of their ability to reach the Afghan public. Although the civilian counterparts of IMF countries pro-

vide much foreign aid and development assistance in Afghanistan, my research with CIVIC indentified only one program funded by the civilian branch of an IMF country that specifically addressed conflict-affected civilians: the Afghan Civilian Assistance Program (ACAP). Created by the United States Congress and implemented on the ground by the International Organization for Migration (IOM), ACAP's mission is to seek out and provide tailored, in-kind assistance to civilians harmed by IMF as far back as 2001.

ACAP was officially established by the U.S. Congress in 2006, though its work had been operating under another similar mechanism several years before. It is funded by USAID and implemented by IOM. In fiscal year 2008, the U.S. Congress appropriated US$20 million for the program.

According to the legislation, ACAP is "designed to assist Afghan families and communities that have suffered losses as a result of the military operations against the Taliban and insurgents."[16] Civilians eligible to receive ACAP assistance include families suffering losses due to U.S. military activities since 2001 or any ISAF activities since 2006. This includes losses indirectly resulting from IMF actions, including suicide bombings or other attacks against IMF or support personnel for IMF. Eligible losses include the death of a family or community member, the severe injury of a family breadwinner, significant property loss and the loss of important community buildings or infrastructure.

Staff from ACAP, usually Afghans, work individually with families to help them rebuild. Aid packages include any or all of the following: developing a local business, supplementing an existing business, providing literacy or vocational training for children or adults in the family, rebuilding or constructing shelter, medical treatment or other in-kind assistance.

ACAP assistance varies depending on the needs of the affected civilians. The primary form is livelihood development. Families with an existing business may be given material to help expand it—from infrastructure improvement to additional stock for grocery stores, wood-selling businesses or other trades. Families with no regular business or income may be given material or the training necessary to develop one, such as materials for a grocery store, carpentry or mechanical training for sons of a family, or vocational training in cosmetics or sewing for women of the family.

CIVIC interviewed a widow, Bibi Merra, who was training to become a beauty technician. She lost her husband and her home in a U.S. air-strike in 2001 and, seven years later, was still forced to rely on relatives to provide food and shelter for her children. She told us: "After I finish I will set up a beauty salon for this business. . . . At first I could not imagine that I could learn to do it. . . . [Now] I hope to have my own independent income and when I do this will take the pressure off of me a little bit."

Timor, a taxi driver from the eastern province of Jalalabad, told CIVIC his taxi was destroyed by stray bullets in an escalation of force incident with U.S. troops. He described how: "When I was discharged from hospital, I was totally recovered but I didn't have any way to support my family now that my taxi had been destroyed. ACAP recently helped me purchase a vehicle. ACAP has also given assistance for the education of my three sons and five daughters."

For many families, this livelihood assistance was not only a source of income but a way to reintegrate the disabled into their communities. Social stigmas in Afghanistan often prevent the disabled from receiving an education, finding employment or otherwise carrying on a normal life. CIVIC spoke with one young man whose arm was incapacitated when a suicide blast exploded near him in the central market of Gardez city. ACAP helped pay for an apprenticeship as a mechanic and purchased the equipment he needed to start his business. He pointed to his partner, who was his teacher during the apprenticeship, "I was a student of this man [senior mechanic] but now I am better than he is!"

Most families also receive standard educational "kits" for children of the family. Literacy training for women or children in the family is strongly encouraged. Women of the family are often given sewing kits, and where possible, found employment as seamstresses or other work appropriate to women.

In some cases ACAP funds medical expenses or travel to/from medical treatment centers. Given the high poverty levels in Afghanistan, the cost of transport to the place where treatment is provided can prevent civilians from receiving critical or continuing treatment. In one of its more exceptional cases, ACAP assisted Bilal to go to India for eye treatment after shrapnel wounds from a U.S. air-strike in 2002 destroyed his vision. The treatment had not restored his eyesight as of the date of this report, but the operation provided him with a chance and he and his family were extremely grateful. They said they had written countless letters to the U.S.

Embassy, military authorities and other agencies for years, and while everyone promised to help them, ACAP was the only one that actually did.

Other civilians also told CIVIC that while they had asked for help—sometimes for years—from IMF, from the government or from other agencies, ACAP staff were the only ones to follow through on promises of aid. Three friends in Kandahar city lost their carpentry businesses and nearly their lives to a suicide bomb. The men said they received no help from anyone despite extensive publicity surrounding the bombing. When ACAP identified them, medical expenses had put them into such dire economic straits they could barely feed their families. One of the carpenters explained the significance of the ACAP assistance: "Nowadays, if you get a piece of bread from someone, you are happy. So this aid is very important. It will help to expand my supplies and to expand business. It will bring positive effects to my family. With this business, we can pay off the loans that we owe to people."

ACAP also provides community assistance, usually when an incident has affected the whole community or when security concerns prevent individual assistance. For example, a February 2002 U.S. air-strike caused heavy losses for one village in southeastern Paktia province, but because of its remote location and high security risks, little aid or assistance by any humanitarian or government agency had been possible for years.

In 2008, ACAP was able to help the community by providing them the materials and cash-for-work payments to build a retaining wall.

Where ACAP assistance was delivered at approximately the same time as compensation or cash "condolence" payments from the international military or the Afghan Government, civilians were far more likely to recover from their losses. ACAP assistance usually requires families to provide some input—for example, jointly splitting expenses with ACAP for an investment in a new business. A cash influx from IMF or the Afghan government together with ACAP's livelihood assistance tended to help families pay their share of these costs, or enabled them to pay for immediate funeral or medical expenses and still have money to contribute toward making the most of their ACAP assistance, according to ACAP staff.

While most beneficiaries seemed happy with the ACAP assistance, implementing this type of program has its challenges. Months can pass between when a family is identified and when they actually receive aid because identifying eligible civilians is exceedingly difficult and any resulting aid package takes time to personalize. Further, while distinct funding from the U.S. Congress for ACAP did not come through until 2006, civilians are eligible for assistance based on losses suffered as far back as 2001. These beneficiaries will receive aid 5 or more years after the harm occurred. ACAP staff has a goal of turning around new cases within 8 weeks, but the backlog of cases combined with new cases has made that goal impossible thus far.

As violence escalates across Afghanistan, identifying civilians and delivering assistance becomes that much more difficult. As Masood Karakhoil, a humanitarian working in conflict-prone areas said: "The situation now . . . the frequency and intensity of attacks makes it difficult to find families [who are eligible] and makes it even more difficult to find out how to help them, what they need."[16] Reports by the media or other independent monitors are an important way for ACAP to verify claims but, as security conditions have crumbled, journalists and other monitors are able to access fewer areas to verify the number of civilians harmed.

Poor information sharing between independent monitoring agencies, the military and ACAP made it even more difficult for ACAP staff to overcome these issues. ACAP staff regularly reaches out to representatives of international organizations, military actors or others with knowledge of civilian losses, but such efforts did not always result in the type of information sharing or referrals that might help it identify and verify the eligibility of civilians more quickly. While energy is put into catching military commanders early in their rotation and information about ACAP is included in some briefings, no military representative CIVIC spoke to knew about the program.

Security issues get in the way of quick and effective implementation. USAID programming and other U.S. government-funded programs have long been targeted by insurgents, so ACAP staff are not required to tell beneficiaries where their funding comes from, particularly where doing so might put anyone involved at risk. Now representatives of the international community in many areas across Afghanistan and regardless of their source of funding are being targeted. Afghan staff of ACAP face significant risk going into high-conflict areas to deliver assistance. One ACAP worker described how he was threatened by the Taliban in Kandahar: "I was taking

[16] United States Agency for International Development and International Organization for Migration, "Eligibility Criteria for ACAP Beneficiaries," [Date not available], Copy on file with CIVIC.

a survey and I had cameras up there. The Taliban surrounded us with guns pointed at us. We were captured and we were taken to an area with 70 other Taliban, and fortunately I met someone up there who I knew and that person saved me."

Another staff member described how the Taliban intimidated civilians eligible to receive ACAP assistance: "The Taliban said [to civilians] that if you take any money from the United Nations, then we will take it from you. Any international organization's money will be spent on your burial."

Security is a bigger hurdle for ACAP relative to other programs given its goal of providing individually tailored aid. Each tailored package may require three or more visits to complete assistance, and each visit could be delayed by days, weeks or even months due to persistent security threats in an area, setting the whole process back. A civilian we spoke with described how these security problems undermined his ACAP assistance. An ACAP loan to rebuild his home was to be provided in four installments, with a progress check between payments. However, the requirement that an observer had to check the building process before installments were paid proved impossible in the security environment: The [ACAP] observer said that we would have to guarantee his safety if he went up to see the land. But we cannot guarantee his safety. We cannot guarantee our own safety, so how can we guarantee the safety of the people coming to assess? The Taliban will see us bringing the observer and they will say that we are helping the government and bringing spies to the area.

The family's inability to protect the observer means they have not received their second installment and cannot continue building their home. While ACAP is working to solve some of the issues noted above (for example, hiring more staff in order to speed delivery time), it should be noted that many of the problems ACAP encountered were due to the difficulty of implementing a program like this in Afghanistan rather than any weak or faulty program design. Many challenges are interrelated, making it difficult to address any one concern without creating other problems. For example, efforts to minimize the time it takes to deliver aid may involve trade-offs in minimizing corruption, ensuring equal and consistent aid distribution, or a level of personalization in approach.

While conflict-affected civilians may prefer more timely, plentiful and personalized support, or monetary compensation rather than in-kind aid, program administrators and donors must balance these concerns against institutional priorities of ensuring that aid is accountable, fairly and consistently delivered, and reasonably priced. The fact that ACAP has been able to overcome so many of problems inherent to the current environment of Afghanistan and reach so many civilians in such a specialized way is in itself a huge achievement and certainly a step above many of the other civilian assistance programs available in Afghanistan.

Sustainable livelihood assistance through ACAP seemed extremely valuable to beneficiaries given the economic pressures in Afghanistan. The assistance, however, did not always meet the emotional desire of civilians for redress. Although the program was funded by the U.S. Congress in part to make amends (and promote strategic "hearts and minds" concerns), beneficiaries did not often view the assistance as a source of atonement or condolence for their losses and did not report a sense of redress or reconciliation.

One man lost his father and niece in an escalation of force incident in Jalalabad. The shots from U.S. forces left approximately 1,250 holes in his car. He said the assistance he received from ACAP was a big help but he still wanted accountability in a formal trial: "We want justice," he said. "Yes, there [have] been a lot of changes to my life since ACAP—but I still want justice."

Another man's son was killed by U.S. troops in a road accident. He not only received ACAP assistance for a new business but also a direct apology and monetary support from the troops involved. When interviewed, he seemed to have found greater peace with the military payment and apology than with the ACAP assistance. He was enthusiastic in talking about the ACAP assistance he had received. But when he told CIVIC how the troops apologized directly to him and seemed genuinely remorseful, he said he forgave them and did not associate the same sentiments with the later ACAP assistance: "We appreciate the assistance. Nobody can give the price of the dead. Nobody can replace what you have lost. But this assistance that ACAP provided to us . . . we are very happy with it."

As mentioned previously, ACAP assistance often comes long after the actual incident. The gap in time between the incident and the response may also help explain why the assistance is often not considered a direct response to the harm done.

While few civilians talked about ACAP assistance as a means of redress, many said they enjoyed a better quality of life, and as a result seemed more positive about their situation and less resentful about the incident. Further research should be done into how this type of assistance might contribute to a sense of redress.

CONCLUSION AND RECOMMENDATIONS

I have focused my testimony on what I observed and learned about the Congressionally-funded ACAP program. The ACAP program has done a remarkable job in identifying and reaching out to civilian victims of conflict in an increasingly tough environment. It occupies a unique role in the web of victim assistance and redress in Afghanistan, and should continue to be supported. The tailored aid seemed better able to meet the variety of needs from which conflict-affected families suffer than other approaches like military compensation. In many cases, ACAP assistance was extremely effective in helping victims of conflict rebuild their lives and recover from an incident. Challenges include the slow delivery of aid and access limitations due to increasing and geographically shifting insecurity. More funding and coordination might address some of these problems. Greater funding for staff from the U.S. Congress can speed delivery times, and greater coordination with other victim support or ex gratia mechanisms might help get around security hurdles to identifying beneficiaries.

The ACAP program is a remarkable achievement, and the only one of its kind by a foreign government. Yet, Congress can do so much more.

The U.S. Government should initiate and spearhead the development of a unified, comprehensive, and coordinated mechanism for condolence payments in Afghanistan.—As evidenced by the ACAP program and by the U.S. military's early adoption of direct condolence payments to Afghan civilians, the United States has been a leader on the issue of compensation and victim assistance in Afghanistan.

Given our coalition commitments in Afghanistan, though, it is not enough to do it alone. There is no unified or systematic NATO mechanism for providing condolences for damage or loss caused by military operations. Rather, the processes for dispensing condolence payments are opaque, ad hoc, and vary from nation to nation. The amount paid in condolences to an individual family has ranged from US$25,000 to a few hundred dollars to nothing, depending on the location and the countries involved.

Most of our NATO partners have funds available for victim assistance, and have provided compensation or victim assistance in the past where incidents have arisen. The foundations for doing this right is there, but so far the coordination has not been. As the leader on these issues, the United States should push for NATO to establish a centralized and unified condolence payments mechanism comprised of senior military staff, including from the Afghan National Security Forces (ANSF), and specialist civilians. In particular, NATO should:

—coordinate and liaise closely with all ISAF, OEF and ANSF units and the ISAF civilian casualty tracking cell;

—ensure that staff working to address civilian losses are easily accessible in all conflict-affected areas and that communities are made fully aware of the claims process;

—develop clear, consistent rules on eligibility for condolence payments; and

—ensure that such payments are sufficient and appropriate for the harm suffered.

Congress should create a consistent, uniform claims system for non-combatants harmed as a result of U.S. actions.—In the absence of a viable civilian claims program, the current condolence program was pieced together in 2003 and remains ad hoc, inadequate, and poorly funded, often increasing resentment rather than fostering goodwill. Because existing condolence funds and claims systems have been developed as the need arose, the system is constantly reinvented with each military engagement, and sometimes with each new troop deployment. The result is a fractured, uneven, and sometimes unfair system that often does not serve the strategic or humanitarian aims for which these mechanisms were created. To address these problems, Congress should create a permanent, effective civilian claims system that would:

—create separate lines of funding, so that available condolence funds are not squeezed out by competing demands to reconstruction projects or other counter-insurgency demands under the Commander's Emergency Response Program (CERP)—the fund from which most condolences are currently pulled;

—establish uniform, theater-specific guidelines on standards of proof, valuation, recordkeeping and an appeals process;

—valuate loss of life, limb or property on a case-by-case basis (with culturally appropriate guidance) with no artificial ceiling;

—provide the JAs, who are already trained in adjudicating claims under the Foreign Claims Act for non-combat harm, with further practical guidance on standards of proof as well as appropriate ways to deal with civilian victims;

—ensure that the current mechanism will be a permanent one, so that in the event of any new conflicts or military engagements, the U.S. military will have a fair and functional claims system ready to go for civilians caught in war.

Congress should encourage Secretary of Defense Robert Gates to create a high-level position at the Pentagon to track, monitor, analyze and, in sum, decrease the human costs of war.—The U.S. government must respond to international outcry over civilian casualties wherever the United States is militarily engaged. With every civilian harmed by U.S. forces, anger grows. America's image abroad suffers. Minimizing civilian harm is not only the right thing to do, it's critical to achieve U.S. military and political objectives. There is consensus on this at the highest policy levels, yet there is no office or senior person at the Pentagon responsible for carrying out these strategic imperatives. From our counterinsurgency initiatives in Iraq to programs like ACAP or condolences in Afghanistan, the United States response has been ad hoc all the way from planning to execution. There is an urgent need for the U.S. government to devote more focused resources and institutional attention to such a critical issue. In particular, an advisory position at the Pentagon would act as a nexus to:

—assess the potential human cost of war before any shots are fired;
—augment techniques to avoid civilians once the fighting starts;
—maintain proper investigative and statistical data on civilian casualties;
—ensure efficient compensation for unintentional civilian harm.

No amount of compensation or assistance can bring back a loved one, yet survivors can be properly supported and helped toward some semblance of recovery. For moral and strategic reasons, the billions of dollars spent to win, keep and rebuild Afghan communities must include specific outlays for recognition and assistance to civilians suffering losses due to the conflict.

Senator LEAHY. Thank you.

I have been making notes as you and Mr. Chromy have been talking. I intend in the next few weeks to be in both Iraq and Afghanistan. That is one of the reasons I wanted to have this hearing now.

I want to call on Mr. Tracy, who, among other things, was a JAG officer in Iraq. Am I correct on that?

STATEMENT OF JONATHAN TRACY, ASSOCIATE DIRECTOR, NATIONAL INSTITUTE OF MILITARY JUSTICE

Mr. TRACY. Yes, Mr. Chairman. I was. And thank you for inviting me to speak.

I was actually a Judge Advocate serving in Baghdad from May 2003 until July 2004, and my main area of responsibility was adjudicating claims filed by Iraqis for harm that U.S. forces allegedly caused. And in particular, I am going to talk to you about the condolence program, which the military eventually created to provide some sort of monetary assistance to civilian casualties.

As I said, I was there in the beginning of the conflict in May 2003, and I would like to just tell you about a couple of the cases that I handled. During my entire tenure there, I probably handled about 1,500 to 2,000 cases, and one of the first ones involved a series of shootings at a hasty checkpoint. And this was a typical sort of case. I probably had about 50 or so of these sorts of cases.

On this particular day, soldiers in my unit had established a hasty checkpoint in the Karadah district of Baghdad, and I don't recall the reason why. But anyway, they had established this checkpoint, and a vehicle driven by an older gentleman approached the checkpoint.

He was not used to these sorts of things. He wasn't used to U.S. soldiers. This was very early on in the conflict. And he drove too close, and a soldier in a Humvee fired a 50-caliber rifle at him, and it killed him.

Unfortunately, that is not where the tragedy ends. As the soldiers were securing that vehicle and that scene, a second vehicle approached the checkpoint and same scenario. The car, for whatever reason, wasn't used to checkpoints, drove too closely, and the U.S. soldiers fired on that vehicle, killing the driver and the passenger.

I had the opportunity to meet the family members from all three of those victims, and they came in, and I investigated it. And I can tell you that there was no evidence that they had any ill intent toward the United States. There was no weapons found in the vehicles. There was no contraband. It was clearly just a tragic incident that they weren't used to checkpoints, and the signage that was used by the soldiers probably wasn't good enough.

But for whatever reason, this thing happened. And obviously, the soldiers themselves were operating within the rules of engagement. That is the reason why I could not provide compensation under the Foreign Claims Act.

The Foreign Claims Act has been around since World War II and allows us to provide full compensation if the harm results from a noncombat act or a negligent act or a wrongful act. In this situation, the military rules were followed. The rules of engagement were followed. So these soldiers were acting within those rules. So I couldn't offer compensation.

However, since World War II, the military has sometimes come up with various systems to provide some sort of sympathy payment. Sometimes they do. Sometimes they don't. For whatever reason in the Iraq conflict, they decided that this would be inappropriate, and for the first 5 to 6 months of that conflict, we were not able to pay any sort of sympathy payments.

So a case like I just described to you, which would have been a perfect example of innocent civilian casualties, there was no source of funding to provide any aid to them. And that lasted, like I said, for the first 5 to 6 months of the conflict.

Eventually, lawyers on the ground, commanders on the ground made enough of a complaint up the chain of command that they eventually—the command in Iraq did establish a system, the condolence system. At the time, originally, I could offer $2,500 for a life, and $1,000 for an injury. Today, that amount is $2,500 for a death, for an injury, or for damaged property.

Even though this program was very well intended, there was a lot of significant problems associated with it, and one was that there was no standardized rules. Two Iraqis who suffered substantially the same harm in different areas of the city would be treated very differently depending on what office they went to inside Baghdad to file their claim at.

Just to give you one example, I had a case where a mother and her young daughter who was age 7 were walking to the market, and the U.S. soldiers that were driving down the street were ambushed, and there was a firefight that ensued between the soldiers and the insurgent forces. And tragically, the young girl was shot in the crossfire.

And she originally—the mother, that is, originally filed the claim with the appropriate unit. This happened in a different unit's area of operation, in a different section of Baghdad. And she filed the

claim there, and the lawyer rightly denied the claim under the Foreign Claims Act because it was a combat claim. But he also didn't pay a condolence payment, even though at the time these were authorized, and he could have paid her $1,000 for that injury. For whatever reason, he decided not to pay that.

Luckily, she did find a different avenue. She found our office hours, and she came and filed the claim with us, and we were able to pay her $1,000 for her daughter's injury. But not every time did that happen. You know, people generally don't go shopping around or driving to different areas of Iraq just to file a claim once they are denied. They figure if they are denied by one officer, they are probably going to be denied by other officers.

So this lack of standard rules really caused a lot of heartache.

Another problem that I encountered on a weekly basis is that I never had enough money. I had to deny so many valid condolence payments simply because I didn't have any cash. And one of the reasons for that was that condolences are out of the Commander's Emergency Response Program, which funds all sorts of other reconstruction projects that the military is involved in. And those projects, fixing hospitals and the like, obviously to the commanders take more precedence over individual payments to civilian casualties.

So many times, I had no money. And on any given week, I on average had $7,000. But I had many more people filing claims than that would have covered. And some weeks, I had zero dollars, which meant no one got any money that week. And in a lot of instances, people would come back 2, 3 weeks in a row, but I would never have enough money to pay their claim.

And another problem that was associated with that is that in many instances, I had to make sort of gut decisions about who was going to get money and who was not, even though they were valid, and that was a very painful position to be in. And it is one that I don't think any unit or any attorney or commander should have to be in. All valid claims should be able to be paid.

Since leaving the Army in 2005, I have sort of dedicated some of my time to trying to help fix these issues and make the program more equitable to the civilian casualties. And I think that, ultimately, it is going to take congressional action and legislation to fix this problem.

As I said, the military sometimes creates ad hoc programs to provide compensation in these sorts of cases, but sometimes they don't. That is why we need a permanent system, something that is always on the shelf, and for any conflict that the U.S. military engages in, they have the system that they can take off the shelf and use. It would also create uniform standards and rules that all commanders and lawyers and other soldiers would be trained on before going into a conflict zone so that they would all know how to implement it on the ground.

And finally, it would be a dependable source of funding. So attorneys out in the field or commanders out in the field who have valid claims that they want to pay would have funding, as they do under the Foreign Claims Act.

Just in conclusion, Mr. Chairman, I just wanted to say that I think that the debate over providing aid to civilian casualties is

largely over with in the military. Pretty much all military commanders and lawyers understand that there is a need to pay these sorts of things. The problem is that the systems that we have been using have been imperfect, and I think that we can definitely do better in the future.

Thank you.

[The statement follows:]

PREPARED STATEMENT OF JONATHAN TRACY

Chairman Leahy and members of the Subcommittee: Thank you for inviting me to submit written testimony for this session. I am currently the Assistant Director of the National Institute of Military Justice. Before taking my current position, I served this country as a U.S. Army judge advocate. After leaving the military, I worked for the Campaign for Innocent Victims in Conflict (CIVIC) as a military legal advisor. I joined the U.S. Army in January 2002 after completing law school and obtaining my license to the Ohio State Bar. I was both excited about my upcoming service in the Army and unsure of what to expect. After nearly 4 months of Officer Basic Course, I reported to my duty assignment in Baumholder, Germany with the 1st Armored Division. I trained and worked in that legal office for one year before deploying to Baghdad with the 2nd Brigade of the 1st Armored Division in support of Operation Iraqi Freedom.

Two attorneys were assigned to 2nd Brigade. Based on our division of labor, I was tasked with administrative law, legal assistance and claims law. The testimony here concerns my assignment as the brigade claims lawyer. Besides adjudicating the occasional claim filed by U.S. service members, for items such as lost laundry or stolen DVDs, I adjudicated claims filed by local Iraqis within my brigade's area of operations in Baghdad. This duty occupied approximately 60 percent of my time while in Iraq. Second Brigade's area of responsibility included the Karkh and Karadah districts of Baghdad, both major population centers. I handled approximately 1,500–2,000 cases during my 14 months in Iraq. Claims from Iraqis were handled in one of two distinct systems. The first is a product of the U.S. Code—the Foreign Claims Act [1] (FCA)—and the second is an ex gratia program known as the Condolence Payment Program.

I dealt extensively with both programs and met with hundreds of innocent Iraqi civilians in 2003–2004 who suffered immeasurably from the armed conflict. I treated them according to the law and the military orders in place. While these well-intentioned rules—which to my knowledge remain largely the same today—attempt to provide assistance to individuals or families for "collateral damage", a large gap exists in the system that bars many innocent victims from receiving just treatment. After leaving the military, I decided it was important to shed light on the inherent problems within the claims system with the hope that Congress might remedy the situation to ensure the just and equitable treatment of all innocent civilian casualties. Military commanders, planners and lawyers have long understood the need to help where we have inadvertently harmed. There is no debate about that policy. The question is, can the United States do a better job of providing assistance to civilian casualties?

The Foreign Claims Act

The preamble of the FCA defines its purpose as being to "promote and maintain friendly relations through the prompt settlement of meritorious claims." In other words, the goal is to win hearts and minds. Foreign nationals may file claims to receive compensation for a death to a family member, personal injury, or property damage caused by a member of the armed forces or a civilian employee accompanying the force. Several elements of the FCA must be satisfied before compensation may be authorized. The claimant must be "friendly." This means the victim may not be an enemy to the United States or provide aid to an enemy. A claim must be filed within 2 years from the date the harm occurred. To be payable, the damage or injury must result from a "noncombat" activity or a negligent or wrongful act. A claim is not payable if the harm results from a lawful and reasonable combat act. For example, civilians standing between insurgents and U.S. soldiers during a firefight would not be eligible for compensation under the FCA for any harm that resulted from the firefight as long as the U.S. soldiers involved operated within the rules of engagement (ROE) and without negligence. For example, one type of case

[1] 10 U.S.C. § 2734(a).

I saw a lot of was shootings from a U.S. military convoy. Soldiers in a convoy would perceive a threat from a civilian vehicle and fire at the vehicle killing or injuring the occupants after various non-lethal measures failed to get the civilian car to stop. After investigating the vehicle, the soldiers would not find any weapons or evidence that the occupants were part of the insurgency. I would not be able to offer any of the survivors of the family members of the deceased any compensation because the use of force by the soldier would be deemed within the rules of engagement. Claims judge advocates call this rule the "combat exclusion." It is defined as any incident that results directly or indirectly from action by enemy or U.S. forces engaged in armed conflict or in immediate preparation for impending armed conflict.

I believe I authorized a few hundred thousand dollars in FCA payments. The vast majority of cases involved vehicular accidents. I received some training on claims law while at Officer Basic Course in 2002. I also received training by a civilian employee of the U.S. Army Claims Service, the agency responsible for overseeing tort claims. All judge advocates appointed to serve as foreign claims commissioners must receive the U.S. Army Claims Service's training. This training covers the statute and the Army's implementing regulation, Chapter 10 of Army Regulation 27–10 ("the regulation"). Various topics such as the rules of evidence, the burden of proof, rules governing how to evaluate damages, and how to determine a proper claim and claimant are covered extensively in the Regulation. I felt confident before I met my first claimant that I understood the Foreign Claims Act and how to implement it according to Congress' and the military's intent.

Condolence Payments

The Condolence Payment Program in Iraq is an ad hoc program created 6 months after Operation Iraqi Freedom began. Because a substantial amount of the harm civilians suffered in Iraq occurred, and continues to occur, during lawful combat engagements, which is precluded from compensation under the combat exclusion of the FCA, the U.S. military realized they needed some system to provide monetary assistance for civilian casualties. Of course, the creation of this ad hoc system was not a foregone conclusion. In fact, originally, the U.S. Central Command, the command responsible for Iraq, ordered solatia or sympathy payments not be allowed in Iraq, meaning there was no supplement to fill the gap left by the combat exclusion of the FCA. This order also applied to Afghanistan. Because of this rule, when I began adjudicating claims and meeting with Iraqis, I could offer no monetary assistance for civilian casualties caused during combat operations. This lasted until October 2003. Between May and September of 2003, I had to tell more innocent civilian Iraqis than I care to count that there was nothing I could do for them. I sent widows, widowers, orphans, and many injured persons away with only a hollow "I'm sorry."

On any given day, more Iraqis brought cases to me arising from combat action than claims arising from a non-combat act. During the summer of 2003, several claims lawyers, including myself, voiced concern through the chain of command about the numerous Iraqis we were required to turn away without providing assistance. Eventually, the command in Iraq recognized the problem and created the Condolence Payment Program to offer minimal assistance to civilian casualties of combat operations. The program was created under the Commander's Emergency Response Program (CERP) fund. The CERP fund is one of the main tools through which commanders implement reconstruction efforts in Afghanistan and Iraq. Condolence payments constitute one, very small, aspect of the CERP fund. Originally, under the CERP rules, I could offer $2,500 per death and $1,000 per injury. Sometime around January 2004, authorization was granted to offer $1,500 for property damage. After I left Iraq, the rules changed again, now a unit can offer $2,500 per instance of death, injury, or damage to property. A general office may provide $10,000 for a death. However, there is no evidence based on the documentation I have looked through, that a payment of $10,000 has ever been paid.

I paid approximately $150,000–$200,000 in condolence payments. I had one of the more visible and heavily visited claims in-take locations so I saw a lot more claimants than other units. I worked inside the Baghdad convention center—a major hub for Iraqis seeking various types of assistance.

With the creation of the Condolence Payment Program I was finally allowed to offer something—even if it was only a token sum—to civilian casualties. However, the program failed in several respects. Most significantly, I never had enough money to offer payments to all deserving claimants. I recall numerous cases where I provided an amount significantly less than what was authorized under the rules. I recall one gentleman who filed a claim after his children were severely burned by a cluster munition they found while playing in a field. I could only provide the man with $1,000 for the significant injuries of his two children. I once paid a woman only $300 after an explosion caused her to lose a foot. Further, there were many people

I could not offer any money to even though I knew conclusively they were innocent civilians harmed during U.S. military combat operations. I lacked money because the vast majority of my brigade's CERP funds went to various reconstruction projects. Understandably, my commander prioritized CERP funds for hospitals, schools, or power stations, at the expense of condolence payments. The perception was that fixing a school and employing Iraqi contractors allowed funds to go further than paying a widow for her husband's death. Because the same fund supported both projects, the one of seemingly less importance got short-changed. On average, I received only about $7,000 a week to spend on condolence payments. However, some weeks I received nothing. It became nearly impossible in my opinion for this program to meet its stated goals of helping win the hearts and minds.

Another significant problem I encountered with the program arose from the ad hoc nature inherent to the program because of the manner in which it was created. There were no rules or solid guidance provided. Some units and lawyers handled substantially similar cases in drastically different ways. For example, different rules of evidence and procedure were applied in adjacent areas of Baghdad. Some units instituted very short time limits, such as 3 months, on when an Iraqi needed to file a claim for a condolence payment. Some of the problems with such a requirement are obvious: (1) many times survivors simply cannot file a claim within that time limit because they are still grieving or healing; (2) claimants may not be able to discover the proper office to file their claim within that time limit; and (3) it can take much longer than 3 months for a claimant to collect all of the necessary documents and evidence. It should be noted that the Foreign Claim Act has a 2-year statute of limitation.

Additionally, lack of rules and guidance hampered the attainment of the program's goals because some units refused to decide cases where a different unit caused the harm. This was true regardless of whether the unit that caused the harm left Iraq or if it was difficult or impossible for the Iraqi to find transportation to the other unit's location. Also, some units simply did not offer payments for certain types of cases. This wide birth of discretion created great disparity in the application of the program. Obviously, the conflicting outcomes created by these different reasons caused negativity to intensify and nullified much of the goodwill produced by the Condolence Payment Program.

Another problem concerns valuation. Numerous Iraqis expressed shock that all I could offer was $2,500. Some even indicated they felt insulted. I attended numerous District Advisory Committee meetings in Karkh and Karadah where local politicians discussed pertinent issues to their communities and meetings with local Sheiks. Every Iraqi I spoke with on the issue expressed disbelief I could only offer $2,500 for the death of a human being. Not one Iraqi I encountered ever said the amount made sense or was equitable. The irony is that if an Iraqi filed a claim with me because a military truck on a routine patrol hit the man's parked car, I could pay him for the full value of his vehicle. However, if the same man filed a claim because his 5 year old daughter was killed by a stray bullet from a firefight involving U.S. forces, I could only pay the man $2,500—if that. Binding a brigade to $2,500 in every case limits the unit's ability to adequately assist in the most cases. The artificial limit left survivors bitter and frustrated with the process and in turn the U.S. military.

Historical Perspective

As mentioned above, the United States has long recognized the need to fill the gap left by the combat exclusion of the FCA. The purpose of the FCA—to win hearts and minds—was not furthered by the combat exclusion. U.S. military attorneys and commanders have stated that paying combat claims is essential to the military's interests in repeated engagements since the Vietnam War. As one example, after an incident involving the deaths of many Vietnamese in the city of Nha Trang, judge advocates at U.S. military headquarters in Vietnam convinced ground commanders that paying claimants would "gain the goodwill of the people,"[2] and that an "effective claims program supported the war against the guerrillas."[3] While the military used contingency funds in this particular case, Judge Advocates recommended that U.S. law be amended to authorize combat related claims.[4] Military lawyers continue to realize that offering combat claims is important. In its after-action review of the first year of combat missions after September 11, 2001, the U.S. Army's Center for Law and Military Operations wrote, "[C]ommanders believed that the payment of

[2] Frederic Borch, Judge Advocates in Vietnam: Army Lawyers in Southeast Asia 1959–1975 41, (1st ed. 2003).
[3] Id. at 40.
[4] Id. at 40.

legitimate claims helped win the hearts and minds of the populace and enhanced their units' force protection postures."[5] In each protracted period of armed conflict involving the U.S. military, including Grenada, Panama, Desert Storm, Somalia, etc., the U.S. instituted some work-around of the combat exclusion. However, studying each one of those cases demonstrated that as in Iraq since 2003, the ad hoc fixes have not performed to the degree desired and not led winning all the hearts and minds the military hoped to win.

Solution

There must be a permanent, legislative fix to the gap in the claims law. As long as there is not a permanent system in place, there will never be uniformity from one conflict to the next or even from one unit to the next within the same conflict. For each conflict the command will have to again decide if, and what system, they will build. It seems counterintuitive that an issue as important as providing assistance to innocent civilians harmed by our military actions should be so haphazard.

With a permanent system would come substantive guidance on the standard of proof, rules of evidence, how to determine valuation, protocol for units dealing with civilian casualties and examples of the types of claims to be paid. Importantly, my call for a permanent system does not mean that the Department of Defense is required to make any payments. The department and the commanders on the ground should still exercise discretion on if and when to make a payment. The important thing is that a permanent system exists. One that will come with statutory language and regulations. The various branches of military would be able to make the program a part of its training. Lawyers and commanders would be taught the importance of the program and how to implement it successfully. In order for the program to be successful, the implementer must be adequately trained. The Army provides abundant training to judge advocates on how to pay claims under the FCA. This allows the claims program to run efficiently and uniformly. A program that does not operate efficiently and uniformly will not treat injured parties with fairness and respect. The training must provide practical guidance on the applicable standard of proof and other evidentiary issues, as well as provide information on why the program is important and why the claims officer must show empathy toward victims.

The $2,500 limit must be lifted. The program must contain a mechanism to provide a sliding scale of payments. This allows more money to be spent in deserving cases. The important point is to ensure the amount is high enough to demonstrate genuine condolence and provide enough resources for the survivors to recover from the loss in the short-term. Establishing guidelines will obviously be difficult. Valuation will always be subjective. However, guidance can be provided in the same way guidance is given to judge advocates in determining valuations under the FCA. A lawyer can be effectively trained to evaluate each case by its set of facts and circumstances to find an appropriate amount and make an informed recommendation to the commander who would ultimately be responsible for authorizing a payment.

Along with lifting the ceiling for awards, a claimant must be able to appeal the decision when he or she feels the amount offered is inadequate. Similarly, if the claim is denied outright, the claimant must be offered the chance to file additional materials and appeal the denial to a higher authority. Transparency is essential in this process. It is important the system be fair and open. If a claim is denied, the claimant deserves to know the basis for the decision and have that decision provided to him or her in writing. None of these attributes existed in any of the ad hoc systems used over the decades, including condolence payments. Both appeals and written notices of a decision are provided under FCA.

By legislating a new system, funds would be separate from any other reconstruction projects associated with the military's involvement in a country. As with the FCA, all the funds needed would be available to all the appropriate claimants. This will also ensure people receive payment in a timely manner. Timely payment is essential; often times a family's suffering continues growing exponentially when help is delayed. Also, having a separate and permanent claims system for this sort of harm ensures more attention will be given to the victims which will help the United States achieve the all important counter-insurgency goal of winning hearts and minds.

The single greatest achievement I hope for in instituting a permanent condolence payment system is that the program will be implemented uniformly. Permanence

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[5] Center for Law and Military Operations, The Judge Advocate General's Legal Center and School, *Legal Lessons Learned from Afghanistan and Iraq, Volume I: Major Combat Operations September 11, 2001–May 1, 2003* 175, available at http://www.fas.org/irp/doddir/army/clamo-v1.pdf.

will allow the program to be established as quickly as a foreign claims commission is established at the start of any combat engagement—within 2 weeks instead of 4 to 6 months. A permanent program would necessarily be Armed Forces-wide, ensuring that it would be used the same way by all units throughout a combat zone. All victims would be treated equitably. Without a permanent program, such payments will always be haphazard and arbitrary based on each commander's discretion. The senior commanders of an operation may or may not decide to institute a program—as CENTCOM prohibited solatia in 2003—or, senior commanders may piecemeal a new program together—as CJTF–7 did with "solatia-like" payments. A permanent system will nullify this arbitrariness, which will demonstrate the United States is committed to treating innocent victims with dignity and respect.

This type of legislation would represent good public policy, build goodwill on the ground, provide documentation on civilian casualties, ensure adequate training, guidelines, and institutional knowledge, be transparent, treat all civilian victims fairly and would ensure cash-in-hand for victims following a tragic event to help them meet immediate needs. After meeting hundreds of innocent victims of our nation's military operations in Iraq, I understand firsthand how great the impact of armed conflict can be on individuals and families. The U.S. military has long known that we cannot simply categorize these people as statistics. This is why they repeatedly attempt to close the gap left by the combat exclusion of the FCA. However, these ad hoc systems have not led to the desired results. We need a new system that ensures every innocent civilian casualty is treated with respect and justice.

Senator LEAHY. Thank you very much.

In some ways, the bad news is that it has been an evolutionary thing, and in some ways, that is the good news because in many areas it has improved. There is still a long way to go.

Ca, can you tell Mr. Suong and Mr. Phuong that they remind us how much we have learned from them and that they show us what is possible? They give hope to the millions of others who have disabilities. Both my wife and I appreciated meeting them a few evenings ago.

Mr. TRAN. Mr. Suong, sir, said they represent—for Mr. Phuong, the both of them are very grateful. This is a dream come true for them. They never dreamed that they can be here in this country, let alone participation or attend this meeting, hearing today.

Senator LEAHY. Well, look at yourself. You came here sweeping floors for, what, $2 an hour and have your own business and look what you have done to help people in Vietnam.

I think that what you are doing also helps, as various Presidents have said, with the United States-Vietnamese relationship. Has the Vietnamese Government supported you in this regard?

Mr. TRAN. In this particular area that disability and related, we have the full cooperation and support of all levels of the Vietnamese Government, and that is very key for our success in the program that we implement in Vietnam, sir.

Senator LEAHY. There is an enormous number of disabled people in Vietnam, and this program alone is not going to be able to help them all. I assume the Vietnamese Government has programs of their own, too, to help. Is that correct?

Mr. TRAN. Yes, they do, but it is fairly limited. In the area of rehabilitation, physical therapy service and rehabilitation, they lack of the technical. And that is where we enlist the technical know-how from various American institutions here like the National Rehab Hospital, the National Institutes of Health (NIH), and others.

Recently, we teamed up with the school, the Bloomberg School at Johns Hopkins to bring in the American experts in the field to go out there to do the training. The Vietnamese Government very

much wanting to have the American technology and skill in the area so they can do it themselves.

And right now, with the help, the grant from the funds, the Leahy War Victims Fund, we are in the last phase of working with the Vietnamese Government's drafter to finalize the new comprehensive disability law. Just 2 weeks ago, we have groups of three lawyers, professor from Syracuse school, university to work with the Vietnamese for 2 weeks in workshop and training. So it has come along, and this is very significant.

According to the initial report from the team that Vietnam, if this law is enacted in October 2009, it will be the first and the best disability law in the whole world.

Senator LEAHY. Let us hope. I think I am going to go back.

Mr. Chromy, I read your testimony, all of which, of course, will be part of the record.

You noted the narrow focus of the program on victims of U.S. and coalition military operations, and you say there are many other civilians who are killed or injured by insurgents who also need help. What would you suggest? What can we do?

Mr. CHROMY. I think the answer to that lies in my last statement. I think we have to work together with the Government of Iraq to develop a capacity within Iraq to continue to assist victims over the long period of time and to assist all the victims.

The U.S. people and this Congress have invested a considerable amount of money in this, and we know it works. It is successful. The staff are trained. They are capable of doing it. We have tried to get the attention of the national Government of Iraq to focus on this, to no avail. Even our requests to meet with the Ambassador here have not generated a response.

And so, my thought would be that with the interest of this subcommittee and with the partnership with the new administration in USAID and so on, if we could jointly approach the Government of Iraq at a senior level and say, look, we have done this. We have gone this far. It is going to be an ongoing effort, and we ought to co-invest in this in the future and build the capacity so that the staff that are trained, the Iraqi staff, can in the future work for either an NGO or government organization there to continue to provide this service over the next generation.

Senator LEAHY. I think your testimony here today will probably come to their attention, and you may be able to get the meeting. We will help you on that.

Mr. CHROMY. Okay.

Senator LEAHY. Mr. Tracy, would you agree with this, what Mr. Chromy is saying, the need to expand and continue to work with others?

Mr. TRACY. Oh, absolutely. I mean, I think that part of the problem, at least in my experience in the military, is there is definitely a disconnect between the military and some of the other civilian agencies and civilian operators that are operating inside the country. I am not just talking about working with Iraqis, but just the United States working with other United States, you know.

So many times in my brigade in Baghdad, we sort of would see USAID or other individuals around but have no idea what they were into or we just weren't talking to each other, in other words.

Senator LEAHY. Well, I commend you both for doing it. At times, it must feel almost like Sisyphus pushing that rock up the hill.

But in that regard, Ms. Gaston, how difficult is it to find Afghans to implement the Civilian Assistance Program? If we had more resources, would it be difficult to recruit more Afghans to do this work?

I ask that because in some areas, I see Afghans who might help us become exposed to danger just for helping us. So, assuming you had more resources, can you recruit more Afghans?

Ms. GASTON. Yes, I actually do think that the resources would be helpful in recruiting. I mean, most of what I did in the last year was in the field and just talking to the different ACAP staff, the Afghans who are actually out there on the ground implementing it. A lot of them were really afraid for their own security, just given what they were asked to do for the program.

And they, a lot of them, if they got a more generous offer, they decided—or even equivalent offer to work for another program that didn't force them to take those security risks, they would often do that because they were afraid, "If something happened to me, what happens to my family?"

So I do think that resources would help in terms of recruiting the people we need.

Senator LEAHY. You are still going to have people worried about their own safety?

Ms. GASTON. Well, you do, definitely. And you should. I mean, I think it is something that the ACAP administrators are very conscious about in Kabul. They try not to put their staff at risk or go anywhere that they wouldn't themselves go.

ADDITIONAL COMMITTEE QUESTIONS

Senator LEAHY. Well, I have to go back to the Senate floor. We have something on the floor that may affect all of this, our budget resolution.

[The following questions were not asked at the hearing, but were submitted to the witnesses for response subsequent to the hearing:]

QUESTIONS SUBMITTED TO JONATHAN TRACY

QUESTIONS SUBMITTED BY SENATOR PATRICK J. LEAHY

Question. As I understand it, for the first 5 months of the Iraq war there were no condolence payments. For whatever reason, Pentagon officials in Washington felt it would not be "culturally appropriate". That was one of the many failures of planning for that war. Only when field commanders determined it was needed was a program put into place, but without hardly any guidance. What if that decision had not been made and there was no program for condolence payments in Iraq—what difference do you think it would have made?

Answer. I believe that a decision to never allow condolence payments in Iraq would have been a tragic mistake. It was a mistake to not authorize such payments during the first 6 months—to not allow them at all would have been unconscionable and very damaging to U.S. military interests. There are two components to this issue. First, it is important morally to offer some sort of monetary aid as a symbol of sympathy for a person's loss and to afford them some measure of opportunity to rebuild their life after tragedy strikes. Second, and very important for the U.S.'s military interests, is that offering condolence payments, or some other type of monetary aid, to civilian casualties is an easy and effective way to build a positive relationship with the local population. Military planners and commanders understand how essential it is for the military to build trust with the population. Not offering condolence payments can quickly destroy trust and breed animosity amongst the

people against the U.S. military in places like Iraq. Therefore, it is my belief that had the military not eventually created a program to offer condolence payments, animosity would have grown and likely bolstered anti-U.S. and anti-coalition forces.

Question. Is it fair to say that condolence payments are essentially a practical and necessary way for commanders in the field to get around the combat exemption in the Foreign Claims Act, for lack of any other authority in law?

Answer. It is fair to say that the condolence payments are the way commanders get around the combat exemption of the Foreign Claims Act. This issue is not new. In repeated U.S. military campaigns the combat exemption of the FCA has posed a real impediment on a commander's ability to build trust and goodwill with the local population. In military operations including Korea, Grenada, and Panama different ad hoc system have been used to close the gap left open by the combat exemption of the FCA. The problem is that the FCA handles one sort of case: non-combat, whether from an accident or a criminal act. There is nothing in law that authorizes payment of monetary assistance for harm to an innocent civilian bystander resulting from a lawful combat action. Unfortunately, while well-intentioned, the various ad hoc systems, including the condolence system in Iraq, have failed to adequately close the gap. Most of the reasons for the failures arise from their ad hoc nature: there is a lack of guidance, no uniform rules, little training for implementers of the systems, a lack of continuous funding, and no oversight.

Question. My staff has been drafting legislation to create a permanent authority for the kind of condolence payments you have described, so the Pentagon does not have to reinvent the wheel every time the United States sends troops into combat. How do you think such an authority, spelling out in general terms the procedures for providing condolence payments to encourage consistency, and authority for funding, would have helped you in Iraq?

Answer. Such a system would have been immensely helpful. First, with such a system in place while I was a Judge Advocate in Baghdad in 2004–2005, I would not have had to send everyone home with no aid for the first 6 months. Second, a permanent system would be a significant improvement over the current condolence payment system. There would be regulations and uniform standards for things like evidence, valuation of damages, and standard of proof. This would ensure that all persons would be treated equally and equitably. Also, a permanent system would create permanent funding. Under the condolence payment system then in place, I never had enough cash to offer money to all eligible persons. A legislated system would also ensure that the military would train judge advocates and commanders on how to use the system long before they deployed and could use the program while preparing for deployment at training centers. Finally, a legislated system would require transparency. The civilian claimants would be entitled to participate in the process by seeing the decisions made in their cases and appealing to higher authorities when necessary. I would like to stress that any legislated system would look a lot like the FCA in the sense that it would not be mandatory for the military to use the system in any given operational setting. Instead, it would be a program that they could implement and could implement effectively since everyone would understand the rules and procedures without having to recreate a system in every operational setting.

Question. If the Pentagon had agreed to testify I would ask them, but perhaps you can say, based on your experience, whether you think such an authority in law would be viewed positively or negatively by Army JAG officers?

Answer. I can only offer my opinion about what currently deployed judge advocates would think. But based on various articles I have read which were written by judge advocates and by reading numerous after-action reviews authored by both judge advocates and commanders, I think the idea of having a permanent and fair system would be welcomed by the military lawyers and commanders. The military understands the need to have such a system because it helps build trust within the community. The question is: can the United States do better? I believe that legislation in this area would allow the military to do a significantly better job, which will ultimately allow them to meet their military objectives more effectively.

CONCLUSION OF HEARING

Senator LEAHY. So we will stand in recess. But I want to thank all of you for doing this. I appreciate the testimony, and I am also going to a meeting with the other chairmen in the Senate this afternoon. I am going to bring up some of the things I have learned here.

So thank you.

We stand in recess.

[Whereupon, at 11:47 a.m., Wednesday, April 1, the hearing was concluded, and the subcommittee was recessed, to reconvene subject to the call of the Chair.]

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